

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO.

COMPLAINT
(Strict Foreclosure of Land Sales Contract)

Plaintiffs allege:

1.

On or about July 3, 2013, Plaintiffs and Defendants entered into a written contract under the terms of which Plaintiffs agreed to sell to Defendants and Defendants agreed to purchase from Plaintiffs the following described real property located in Polk County, Oregon:

LOT 2, BLOCK 1, INDEPENDENCE AIRPARK, IN THE CITY OF INDEPENDENCE, COUNTY OF POLK, STATE OF OREGON. TOGETHER WITH NON-EXCLUSIVE EASEMENT FOR MOVING AIRCRAFT ONTO SKYWAY TAXIWAY.

2.

The contract is attached hereto as Exhibit 1 and by reference incorporated herein. The purchase price is \$290,000 with interest at the rate of 5%.

3.

The contract provides for monthly payments of \$3,293.31 beginning July 3, 2013 and continuing on the 5th day of each month thereafter until December 31, 2015, at which time all amounts are due and owing.

1 4.

2 Immediately following the contract, defendants entered into possession of the
3 property and are now in possession.

4 5.

5 Defendants failed to pay the full amount of the monthly installments due on
6 December 5, 2014 and January 2015 and have paid no installments from February 2015
7 through June 2015, after which the balance was accelertaed.

8 6.

9 Defendants have failed to pay the IAHA Homeowner's fees and ODA Access Fees.
10 Sellers paid \$410, including late fees, which is now due and owing.

11 7.

12 The contract provides for late fees of \$150 a month if payment is not received by the
13 15th day of the month. Defendants have failed to pay late fees for December of 2014
14 through June of 2015 in the amount \$1,050.

15 8.

16 The contract requires payment for attorney fees and costs upon default. Payment
17 is due immediately on demand. Despite demand therefore, Defendants have failed to pay
18 Plaintiffs' attorney fees and costs incurred in enforcing the contract beginning March 27,
19 2015.

20 9.

21 Defendants are in default under the terms of the contract. Defendant now owes on
22 the contract the sum of \$255,994.31, with interest at the rate of 5% per annum from July 8,
23 2015, until paid. Time is of the essence in the contract.

24 10.

25 Plaintiffs have declared the entire unpaid balance due and payable.
26

11.

Plaintiff are ready, able, and willing to carry out their obligations under the contract, and to execute and to deliver to Defendants a good and sufficient deed conveying the property in fee simple to Defendants in accordance with the terms of the contract on payment of the full balance of the purchase price, with interest and all other sums owing under the contract.

12.

The contract provides that if an action is instituted to foreclose the contract or to enforce any of the contract provisions, the prevailing party is entitled to recover reasonable attorney fees and costs, including the cost of the foreclosure guaranty. Plaintiffs have paid \$850 for the foreclosure guaranty in addition to the attorney fees and costs.

13.

Plaintiffs have no adequate remedy at law.

WHEREFORE, Plaintiff pray for a limited judgment:

1. Determining the amounts due from Defendants to Plaintiffs as follows:

A) The unpaid contract balance of \$255,994.31, with interest at the rate of 5% per annum from July 8, 2015, until entry of judgment, and 9% interest post judgment;

B) \$410 for the IAHA Homeowner's fees and ODA Access Fees.

C) \$1,050 for late fees from December 2014 through June 2015.

D) \$850 for the foreclosure guaranty.

E) Plaintiffs' costs and attorney fees incurred in enforcing the contract beginning March 27, 2015 and incurred herein.

2. Requiring Defendants to pay to Plaintiffs, through the clerk of the court, the sums listed above within 30 days from the date of the judgment, or within

1 such other time as the court may fix for such payment.

2 3. If Defendants pay these sums to the clerk of the court within the time
3 required above, requiring Plaintiffs to deliver their deed to the property to
4 Defendants.

5 4. If Defendants fail to pay the sums required above to the clerk of the court
6 within the time required, ordering that Defendants be forever foreclosed of
7 all interest in the property, and of all sums previously paid on the contract;
8 that Plaintiffs be put into immediate possession of the property; and that
9 Plaintiffs have judgment against Defendants for Plaintiffs' attorney fees and
10 costs.

11 5. Granting Plaintiffs such other relief as the court deems equitable.

12
13 DATED: July 9, 2015

14 SHETTERLY, IRICK & OZIAS

15
16 By: 

17 Teresa Ozias - OSB #901871
18 Teresa@siso-law.com
19 Attorneys for Plaintiffs

20 H:\T\realproperty\Honbeck\ComplaintForeclosue.wpd

CONTRACT OF SALE

Opening Clause:

DATED: July 3, 2013.

BETWEEN: , Denton A. Honbeck and Jane A. Honbeck, husband and wife

at 634 Cessna Avenue, Independence, OR 97351

AND: , Gregory L. Warnock and Shelly K. Warnock, husband and wife

PO Box 8043, Salem, OR 97303

Seller owns the real property located in Polk County, Oregon, and described in attached Exhibit A. subject (only) to those encumbrances described in attached Exhibit B (the "Real Property") and the personal property described in attached Exhibit B;

Seller agrees to sell the Property to Purchaser and Purchaser agrees to buy the Property from Seller for the price and on the terms and conditions set forth below:

Tax Statement:

Until a change is requested, all tax statements shall be sent to Denton A. Honbeck, 10550 Clow Corner Rd, Dallas, OR 97338.

Section 1. Purchase Price and Payment

1.1 Total Purchase Price. Purchaser promises to pay Seller as the total purchase price for the Property the sum of \$ 290,000 (US).

1.2 Payment of Total Purchase Price. The total purchase price will be paid as follows:

1.2.1 Down Payment. No down payment is required.

1.2.2 Interest Rate and Scheduled Payment Dates. Interest on the balance and purchase price of \$290,000 will accrue at the rate of 5.00% per annum, Fee Simple. The unpaid balance of the purchase price will be paid in monthly installments of principal and all accrued but unpaid interest,

with the first installment due on July 3, 2013, and with subsequent installments due on the 5th day of each month thereafter. See Exhibit C (amortization tables and payment schedule).

1.2.3 Maturity Date. All unpaid principal and all accrued but unpaid interest must be paid in full on _____ or before December 31, 2015.

1.3 Prepayments. Purchaser may on any installment due date prepay all or any portion of the unpaid principal without penalty. All prepayments will be applied to the principal first, then to the last installment of principal scheduled under this Contract, and will not excuse Purchaser from making the regular monthly payments when due under this Contract, unless agreed to in writing by both the Seller and Purchaser, until the remaining balance has been paid in full. This paragraph applies to any payments due under this Contract that are accelerated because of Purchaser's default under any of the provisions of this Contract.

1.5 Place of Payments. All payments to Seller must be made to Denton A. Honbeck, 10550 Clow Corner Rd, Dallas, OR 97338

Section 2. Taxes and Liens

2.1 Obligation to Pay. All ad valorem real property taxes and all governmental or other assessments levied against the Property for the current and subsequent tax year will be paid by the Seller during the life of the Contract.

2.3 Omission from Tax Rolls. Seller covenants and warrants to Purchaser that all the Property and its improvements are fully reflected on the real property assessment rolls of the county. Seller will indemnify and hold Purchaser harmless from and against any subsequent claim or assessment on account of any of the Property or its current improvements being omitted for any reason from the rolls.

2.4 Classification. The Property is classified and specially assessed as a residential property. Purchaser will be responsible for and will pay when due any additional taxes, penalties, or interest resulting from any disqualification of the Property from such classification and special assessment arising from or after the Maturity Date. Seller will pay when due all additional taxes, penalties, and interest resulting from any disqualification of the Property from such classification and special assessment arising before the Maturity Date and not attributable to Purchaser.

2.5 Tax Statements. Seller will provide Purchaser with written evidence reasonably satisfactory to Purchaser that all taxes and assessments have been paid when due. Seller will submit this evidence on the request of Purchaser, which request must be made no more frequently than once each calendar year of such taxes for the previous tax year.

2.6 Liens and Encumbrances. Purchaser will otherwise keep the Property free from all liens and encumbrances that may be [lawfully] imposed on the Property after the date of signing of this land sale contract and, for the length of the Contract.

Section 3. Closing

3.1 Closing Date. This transaction shall be effective on July 3, 2013. As used in this Contract, the *Closing Date* means the date on which this Contract is signed by Seller and Purchaser.

Section 4. Possession and Existing Tenancies

4.1 Possession. Purchaser will be entitled to possession of the Property from and after July 3, 2013, however, Seller and Seller's agents may enter on the Property at reasonable times on not less than 3 business days prior with written notice to Purchaser and consent by Purchaser for the purpose of inspecting the Property. In no event will Seller or Seller's agent interfere with the rights of any tenant of all or part of the Property.

Section 5. Maintenance and Alterations

5.1 Maintenance. Purchaser will keep all buildings, other improvements, and landscape now existing or that will be placed on the Property in at least as good condition and repair as of the date that possession is delivered to Purchaser, and will not make any substantial improvements or alterations that reduce the value of the Property for security purposes without the prior written consent of Seller.

5.1.1 Improvements. If Purchaser desires to alter or further improve all or any portion of the Property, Purchaser must first obtain Seller's written consent before proceeding to do or permit any work or to order any services or materials with respect to that work. As a condition of granting its consent, among other conditions, Seller may require Purchaser to provide a construction and completion bond or other security in an amount and of a nature satisfactory to Seller to cover the proposed costs of construction of the proposed alterations or improvements. All alterations and improvements constructed by or for Purchaser must be completed by reputable Oregon licensed

contractors without defects in conformance, lien-free, with plans, specifications, and drawings approved beforehand in writing by Seller as provided above, and in conformance with standards in the industry. No approval by Seller will be deemed a representation or warranty of Seller that the approved items or conduct are otherwise lawful, safe, or appropriate, or relieve Purchaser from strict compliance with all other provisions of this Contract and all applicable law.

5.1.2 Prohibited Activities. Purchaser will not knowingly use or suffer the use of all or any of the Property for any “nuisance” as defined in ORS 105.555, or so as to constitute an *illegal drug manufacturing site* as that term is defined in ORS 453.858(2), as those statutes may now or hereafter be amended, supplemented, or superseded, or otherwise do or allow any act or omission on or about the Property that could subject the Property or Seller’s or Purchaser’s interest in the Property to forfeiture or the risk of forfeiture.

5.1.3 Governmental Damage. If any damage or destruction of the Property or any portion of it is caused by any governmental or quasi-governmental authority, and to the extent that the same is not a compensable taking under the state or federal constitution, or directly caused by the act or omission of Seller, Purchaser will promptly repair and restore the same at its expense.

5.1.4 Timber and Minerals. Purchaser will not cut or remove any timber or forest products from the Property. Purchaser will not extract, process, mine, or otherwise exploit any oil, gas, mineral, or other valuable deposit on or under the Property.

5.1.5 Hazardous Substances. Purchaser will comply fully with all laws pertaining to the protection of human health and the environment, including but not limited to employee and community right-to-know laws and all laws regarding the use, generation, storage, transportation, treatment, disposal, or other handling of Hazardous Substances (as defined in Section 8.5 below). Purchaser will promptly advise Seller in writing of any Hazardous Substances regulated by such laws that are used, generated, manufactured, stored, transported, or otherwise handled on the Property. Purchaser will exercise extreme care in handling any Hazardous Substances and will not cause or permit Hazardous Substances to be spilled, leaked, disposed of, or otherwise released on the Property.

Section 6. Insurance

6.1 Property Damage Insurance. Purchaser will procure and maintain policies of all-risk/fire insurance with standard extended coverage endorsements a replacement cost value basis covering all improvements on the Property in an amount sufficient to avoid application of any coinsurance clause and with loss payable to Denton A. Honbeck and Jane A. Honbeck, and Purchaser as their

respective interests may appear. The policies must be primary with respect to all covered risks, and must be written in such form with such terms and by such insurance companies reasonably acceptable to Seller. Purchaser will deliver to Seller certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of 10 days' written notice to Seller. In the event of loss, Purchaser will give immediate notice to Seller. Seller may make proof of loss if Purchaser fails to do so within 15 days of the casualty.

6.2 Liability Insurance. During the term of this Contract, Purchaser will maintain commercial general liability insurance with a combined single limit of not less than \$250,000.00 and \$300,000.00 for damage to property. Such insurance must be written on an occurrence basis and must be primary with respect to all other insurance covering any of the insured risks; must cover all risks arising directly or indirectly out of Purchaser's activities on or any condition of the Property, whether or not related to an occurrence caused or contributed to by Seller's negligence; must include a contractual liability clause to protect Purchaser against the claims of Seller on account of the obligations assumed by Purchaser under Section 7; and must protect Seller and Purchaser against claims of third persons. Such policies must be written in such form, with such terms and by such insurance companies reasonably acceptable to Seller. Purchaser will deliver to Seller certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of 15 days' written notice to Seller

6.3 Purchaser's Report on Insurance. Within 60 days after the close of its fiscal year, Purchaser will furnish to Seller a report on each existing policy of insurance required under this Contract showing:

- (1) The name of the insurer;
- (2) The risks insured;
- (3) The amount of the policy;
- (4) The property insured, the then-current replacement value of the property, and the manner of determining that value; and
- (5) The expiration date of the policy.

6.5 Application of Proceeds. All proceeds of any insurance on the Real Property must be paid to and held by Seller. If Purchaser elects to restore the Property, Purchaser will repair or replace the

damaged or destroyed improvements in a manner satisfactory to Seller. On satisfactory proof of expenditure of the Property to at least its condition and value immediately before the damage or destruction, Seller will pay or reimburse Purchaser from the proceeds (net of Seller's reasonable cost of recovering and administering such proceeds and monitoring Purchaser's restoration activities for the reasonable cost of repair or restoration to the extent of such proceeds received by Seller. If Purchaser elects not to restore the Property, Seller will retain a sufficient amount of the proceeds to pay all amounts owed Seller under this Contract, and will pay the balance to Purchaser. Any proceeds that have not been paid out within 90 days after their receipt and that Purchaser has not committed to the repair or restoration of the Property must be used to prepay first accrued interest and then principal of Purchaser's indebtedness.

Section 7. Indemnification

7.1 Purchaser's Indemnification of Seller. Purchaser will forever indemnify, reimburse, and hold Seller harmless and, at Seller's election, defend Seller for, from, and against any and all claims, costs, expenses (including attorney fees), losses, damages, fines, charges, actions, or other liabilities of any description arising out of or in any way connected with (1) Purchaser's possession or use of the Property, (2) Purchaser's conduct with respect to the Property, (3) any condition of the Property to the extent that the same arises from or after the Closing Date and is not caused or contributed to by Seller, or (4) Purchaser's breach of any warranty or representation made by Purchaser in this Contract. In the event of any litigation or proceeding brought against Seller and arising out of or in any way connected with any of the above events or claims, against which Purchaser agrees to defend Seller, Purchaser will, on notice from Seller, vigorously resist and defend such actions or proceedings in consultation with Seller through legal counsel reasonably satisfactory to Seller.

7.2 Seller's Indemnification of Purchaser. Seller will forever indemnify, reimburse, and hold Purchaser harmless and, at Purchaser's election, defend Purchaser for, from, and against any and all claims, costs, expenses (including attorney fees), losses, damages, fines, charges, actions, or other liabilities of any description arising out of or in any way connected with (1) Seller's possession or use of the Property, (2) Seller's conduct with respect to the Property, (3) any condition of the Property to the extent that the same exists on the Closing Date and is not caused or contributed to by Purchaser, or (4) Seller's breach of any warranty or representation made by Seller in this Contract. In the event of any litigation or proceeding brought against Purchaser and arising out of or in any way connected with any of the above events or claims, against which Seller agrees to defend Purchaser, Seller will, on notice from Purchaser, vigorously resist and defend such actions or proceedings in consultation with Purchaser through legal counsel reasonably satisfactory to Purchaser.

7.3 Indemnification Scope. Wherever this Contract obligates a party to indemnify, hold harmless, or defend the other party, the obligations will run to the family members, invitees, agents, and employees, directors, officers, agents, partners, and employees of such other party and will survive any termination or satisfaction of this contract. Such obligations with respect to the acts or omissions of either party will include the acts or omissions of any director, officer, partner, agent, employee, contractor, tenant, invitee, or permittee of such party.

Section 8. Representations, Warranties, and Covenants of Seller

8.1 Covenants of Title. Seller warrants that Seller is the owner of title to the Property free of all liens and encumbrances except those referred to on attached Exhibit 4 and will defend such title from the lawful claims of persons claiming superior title.

8.2 Authority. Seller represents that Seller has obtained all requisite authorizations for the execution and delivery by Seller of this Contract and the performance of the transactions contemplated by this Contract, and that the execution and delivery of this Contract are made pursuant to such authorizations.

8.3 No Brokers. Seller has not employed any broker or finder in connection with the transactions contemplated by this Contract and has taken no [other] action, which action would give rise to a valid claim against Purchaser for a brokerage commission, finder's fee, or other like payment.

8.4 Litigation. There are no pending claims or litigation or threats of claims or litigation or other matters of which Seller is aware or by the exercise of reasonable diligence of which Seller should be aware that could adversely affect Purchaser's title, use, or enjoyment of the Property.

8.5 Hazardous Substances. No Hazardous Substance has been disposed of, spilled, leaked, or otherwise released on, under, or from the Property or has otherwise come to be located on or under the Property. No Hazardous Substance has been disposed of, spilled, leaked, or otherwise released on, under, or from property adjacent to or in the immediate vicinity of the Property. No wastes, including without limitation garbage and refuse, have been disposed of on the Property and there are no underground storage tanks on the Property. The term *Hazardous Substance* means any hazardous, toxic, radioactive, or infectious substance, material, or waste as defined, listed, or regulated under any law pertaining to the protection of human health or the environment, and includes without limitation petroleum oil and its fractions.

8.6 Compliance with Laws. The Property and every portion of it, and all activities conducted on the Property, are in compliance with all applicable federal, state, and local statutes, regulations, and ordinances. Seller is not aware of and has not received notice of any past violation of any applicable federal, state, or local statutes, regulations, or ordinances.

8.7 Nonforeign Status. Seller warrants that Seller is not a *foreign person* as defined in IRC §1445(f)(3) and that Seller is not a “transferor” subject to withholding under ORS 314.258 (“ORFIRPTA”) and that each such warranty will be true as of closing. Seller will deliver to Purchaser and the escrow agent at closing a Certificate of Nonforeign Status, in form complying with the requirements of IRC §1445 and related regulations, setting forth Seller’s address and United States taxpayer identification number and certifying that Seller is not a *foreign person* as defined in IRC §1445(f)(3) (“FIRPTA Certificate”), and a certificate and other documentary evidence complying with ORFIRPTA, reasonably acceptable to Purchaser and the escrow agent (and any “authorized agent” involved in the transaction) and sufficient to assure Purchaser and the escrow agent (and any such authorized agent) that no withholding is required under ORFIRPTA (“ORFIRPTA Certificate”).

8.8 Permits and Licenses. Seller agrees to convey, assign, or otherwise transfer all permits, authorizations, licenses, or other documents relating to or required for the operation of the Property, unless otherwise prohibited by the terms or conditions of such permit, authorization, license, or other document. Seller will cooperate with Purchaser in obtaining any permits, consents, authorizations, or licenses necessary to the operation of the Property; however, Seller will not be required to incur any expense relating thereto unless Purchaser has first advanced funds sufficient to cover all Seller’s reasonably anticipated out-of-pocket expenses; furthermore, Seller will promptly refund to Purchaser any excess funds so advanced, and Purchaser will reimburse Seller for any shortfall in funds so advanced.

8.9 No Further Contracts. Seller represents that there are no contracts, leases, or agreements relating to the Property that will be binding on the Property or Purchaser after the Closing Date.

8.10 No Wetlands or Fill. Seller warrants that as of the Closing Date, Property contains no wetlands or other water bodies or any fill currently subject to regulation under §404 of the Clean Water Act (33 USC §1344) or ORS 196.600–196.990 and will not be in violation of these laws or regulations.

Seller further warrants that as of the Closing Date Seller has not received any notice, and does not have actual knowledge, of any pending or threatened claim, action, demand, suit, proceeding, hearing, or governmental study or investigation against or involving the Property and related in any

way to the fill or removal of the material in or from any wetland located on the Property and Purchaser releases Seller from any and all claims of liability arising out of such wetlands or fill.

8.11 Disclosure. Seller has fully disclosed in writing and provided to Purchaser all material information in Seller's possession or that Seller owns or controls that relates to the Property, its condition, and the title to the Property.

Section 9. Existing Encumbrance

9.1 Obligation to Pay. The Property is currently subject to a mortgage (Equity Line of Credit) with Sterling Bank, as mortgagor and Denton A. and Jane A. Honbeck as mortgagee, dated 03/05/2012, recorded on 03/15/2012, in Book 2012, Page 002457, County Records, Polk County, Oregon. Seller represents, warrants, and covenants to Purchaser that (1) no default exists under the Prior Lien and no event has occurred or failed to occur and no condition exists or does not exist that, with or without notice and the passage of time, could ripen into such a default and (2) Seller will make all payments under the Prior Lien when due and will obey and observe all the terms of such instrument, except for those matters that are to be performed by Purchaser under the terms of this Contract. If either Seller or Purchaser receives notice from or on behalf of the holder of the Prior Lien of breach of any of the terms of the Prior Lien, the party receiving the notice will immediately forward a copy of the notice to the other party, and (3) Seller has no other liens.

10.2 Failure to Pay. If Seller fails to perform any obligation or fails to make any payment required by the Prior Lien when due, Purchaser will have the right to correct the default or to make any part or all of the payment payable to Seller under this Contract directly to the holder of the Prior Lien or third party to whom the payment is required to be made under the Prior Lien until Seller's obligation is satisfied. Purchaser's reasonable costs in performing Seller's obligation with interest at the rate of 5.00% per annum from the date of expenditure will be credited to the next installments coming due under the Contract as though paid directly to Seller.

10.3 Obligations of Purchaser. Purchaser will not cause or suffer any act or failure to act that if attributed to Seller might cause a default under any of the provisions of the Prior Lien.

10.4 Additional Requirements. To the extent required of Seller under the Prior Lien, Purchaser will (1) maintain with Seller any additional reserves or insurance coverage required to be maintained by Seller; (2) provide Seller and the holder of the Prior Lien with any notices, certificates, or policies of insurance required under the Prior Lien; and (3) repair and maintain the Property, provide

operating reports, and apply casualty and condemnation proceeds first in the manner required in the Prior Lien and then in compliance with the provisions contained in this Contract.

Section 11. Subordination

11.1 Subordination. Seller agrees to subordinate Seller's fee interest in the Property to the lien of a trust deed or mortgage (the "Mortgage") to be placed on the Property by Purchaser as long as each of the following conditions is satisfied: (1) the Mortgage is placed on the Property for the purpose of securing funds to finance the construction of, or to secure permanent financing for, improvements on the [Real] Property; (2) the principal amount secured by the construction loan Mortgage does not exceed the "hard costs" of construction, loan fees, and construction-period interest, engineering fees, architect fees, accountant fees, attorney fees (but not attorney fees incurred before actually obtaining the construction loan), city inspection and permit fees, current installments of assessments on the Property during the construction period, and premiums for bonds required in connection with the construction or this Contract; (3) the principal amount secured by the permanent loan Mortgage does not exceed 80% of the fair market value of the [Real] Property, as improved by the buildings and other improvements and all construction and permanent loan funds will be used solely to pay the expenses specified above; (4) the loan secured by the Mortgage is from a bank, mortgage company, savings and loan association, or other institutional lender; (5) the subordination agreement, construction loan, and permanent loan documents are on commercially reasonable terms and in a form reasonably acceptable to Seller, consistent with the terms of this Contract; and (6) Purchaser is not in default in the performance of any obligation under this Contract and no condition exists or event occurs or fails to occur that, with or without notice and an opportunity to cure, could ripen into such a default. The Mortgage or subordination agreement will provide that the mortgagee must notify Seller of any default under the Mortgage and grant Seller a reasonable opportunity within which to cure the default following the notice, not in any event less than the period allowed Purchaser. For purposes of the Mortgage, a default will be considered "cured" as long as Seller causes the overdue payment to be made or commences correction of the defaulted obligation within a 30-day period after receipt of notice of default, and diligently pursues the action to completion. Seller will not be obligated to "cure" any event of default pertaining to the bankruptcy or insolvency of Purchaser or other events related to Purchaser's status that cannot be cured by Seller, and the mortgagee will not foreclose the Mortgage or seek to enforce its other remedies under it as long as Seller otherwise takes the steps specified above. The loan documents will specifically provide that Seller will not have any personal liability with respect to the Mortgage, and Seller's right or election to cure any default or other action will not constitute an assumption of such liability by Seller.

11.2 Obligation of Purchaser. Purchaser will make all payments when due and will timely perform all other obligations required of Purchaser by the terms of any mortgage or trust deed as to which Seller has subordinated Seller's interest in the Property. [The construction, if any, will be bonded and performed pursuant to a firm construction contract with responsible, licensed independent contractors (satisfactory to Seller), and Seller will be named as an obligee on the completion bond.]

Section 12. Deed / Bill of Sale

On payment of the total purchase price for the Property as provided in this Contract Purchaser's performance of all other terms, conditions, and provisions of this Contract, Seller will forthwith deliver to Purchaser a good and sufficient deed and bill of sale conveying the Property free and clear of all liens and encumbrances, and all liens or encumbrances suffered by or placed on the Property by Purchaser subsequent to the date of this Contract.

Section 13. Security Agreement

Purchaser hereby grants Seller a security interest in the Personal Property and all rents, proceeds (including insurance proceeds), profits, replacement income, accounts, and capital related thereto. This instrument constitutes a security agreement within the meaning of the Uniform Commercial Code with respect to any personal property included within the description of the Property and all proceeds (including, without limitation, insurance and condemnation proceeds) therefrom and all replacements, accessions, and products thereof or thereto. On Seller's request, Purchaser will execute any necessary financing statements and take whatever other action is requested by Seller to perfect and continue Seller's security interest in the Personal Property. Purchaser hereby authorizes Seller to file any financing statements with respect to the Personal Property, as Seller deems necessary, at Purchaser's expense. Without further authorization from Purchaser, Seller may at any time file copies of this Contract as financing statements. Purchaser will reimburse Seller for all expenses incurred in perfecting or continuing this security interest. On default under the terms of this Contract, Purchaser will, within three days of receipt of written demand from Seller, assemble the personal property and make it available to Seller.

Section 14. Default

14.1 Events of Default. Time is of the essence of this Contract. A default will occur under any of the following circumstances:

(1) Purchaser's failure to make any Mortgage (principle, interest and taxes) payment within 30 days after it is due.

(2) Any default under the Prior Lien attributable to Purchaser.

(3) Purchaser's failure to perform any other obligations contained in this Contract within 30 days after notice from Seller specifying the nature of the default or, if the default cannot be cured within 90 days, failure within such time to commence and pursue curative action with reasonable diligence.

(4) Purchaser's dissolution, termination of existence, insolvency on a balance-sheet basis, or business failure; Purchaser's commencement of a voluntary case under the federal bankruptcy laws or under other federal or state law relating to insolvency or debtor's relief; the entry of a decree or order for relief against Purchaser in an involuntary case under the federal bankruptcy laws or under any other applicable federal or state law relating to insolvency or debtor's relief; the appointment or the consent by Purchaser to the appointment of a receiver, trustee, or custodian of Purchaser or of any of Purchaser's property; Purchaser's assignment for the benefit of creditors or Purchaser's failure generally to pay its debts as they become due.

(5) Purchaser's making or suffering a fraudulent transfer or conveyance under applicable federal or state law; Purchaser's concealment of any of its property from creditors; Purchaser's making or suffering a preference within the meaning of the federal bankruptcy law; or the imposition of a lien through legal proceedings or distraint on any of the property of Purchaser.

(6) Purchaser's failure to perform any term, condition, or provision of or any default attributable to Purchaser under any existing encumbrance or any default by Purchaser under any contract as to which Seller has or may have subordinated Seller's interest in the Property pursuant to Section 11.

14.2 Remedies of Default. In the event of a default, Seller may take any one or more of the following steps:

(1) Seller may foreclose this Contract by suit in equity.

(2) Seller may specifically enforce the terms of this Contract by suit in equity.

(3) With respect to any part of the Property that constitutes personal property in which Seller has a security interest, Seller may exercise the rights and remedies of a secured party as provided by the Uniform Commercial Code.

(4) If Purchaser fails to make any payment within 15 days after it is due, Seller may elect to impose a late charge of \$150.00, in addition to and not in lieu of any and all other rights and remedies available to Seller.

(5) After complying with the notice requirements and affording Purchaser the right to cure the default contained in ORS 93.905–93.945, as the same may be amended or superseded from time to time, as long as the same is applicable, Seller may declare this Contract forfeited and retain the amount of the payments previously made under this Contract. On recordation of the affidavit required by Oregon law, this Contract will be extinguished and canceled, and Purchaser will have no further right, title, or interest in and to the real property or to any return or compensation for payments previously made under this Contract, as though this Contract and such payments had never been made.

(6) Seller will be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Property exceeds the amount of the balance due under this Contract, and any receiver appointed may serve without bond. Employment by Seller will not disqualify a person from serving as a receiver. On taking possession of all or any part of the Property, the receiver may:

(a) Use, operate, manage, control, and conduct business on the Property and make [necessary] expenditures for all maintenance and improvements [that in its judgments are proper];

(b) Collect all rents, revenues, income, issues, and profits (the “Income”) from the Property and apply those sums to the [necessary] expenses of use, operation, and management;

(c) At Seller’s option, complete any construction in progress on the Property and, in that connection, pay all bills, borrow funds, employ contractors, and make any changes in plans and specifications as Seller deems appropriate.

If the revenues produced by the Property are insufficient to pay expenses, the receiver may borrow, from Seller or otherwise, [such sums as the receiver deems necessary / the amounts required] for the purposes stated in this paragraph, and repayment of those sums will be secured by this Contract. Amounts borrowed from or advanced by Seller will bear interest at the same rate as the balance of the purchase price under this Contract from the date of expenditure until repaid and must be paid by Purchaser on demand.

(7) Purchaser hereby assigns to Seller all the Income from the Property, whether now or hereafter due. Before default, Purchaser may operate and manage the Property and collect the Income from

the Property. In the event of default and at any time thereafter, Seller may revoke Purchaser's right to collect the Income from the Property and may, either itself or through a receiver, collect the same. To facilitate collection, Seller may notify any tenant or other user to make payments of rents or use fees directly to Seller. If the Income is collected by Seller, then Purchaser irrevocably designates Seller as Purchaser's attorney-in-fact with full power of substitution and coupled with an interest to endorse instruments received in payment thereof in the name of Purchaser and to negotiate the same and collect the proceeds. Payments by tenants or other users to Seller in response to Seller's demand will satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Seller will apply the Income first to the Seller's reasonable expenses of renting or collection and the balance (if any) to the payment of sums due from Purchaser to Seller under this Contract.

14.3 Nonrecourse Obligation. In the event of the occurrence of any default in the payment of principal, interest, or both under this Contract, Purchaser will not be personally liable therefor and Seller's sole remedy for that default will be limited to foreclosure of the Property encumbered by this Contract or the exercise of any other rights set forth in this Contract or any other security given to secure this Contract, but will not include the right to proceed directly against Purchaser or the right to obtain a deficiency judgment after foreclosure for the collection of such sums. It is further understood and agreed, however, that nothing contained in this paragraph will in any manner or way release, affect, or impair (1) the existence of the indebtedness evidenced by this Contract and Exhibits referenced herein, (2) the enforceability of the liens and security interests created by, and the rights and remedies of Seller under this Contract and the other security documents, (3) the liability of Purchaser for the performance and observance of all covenants under this Contract and in the other security documents other than the covenants for the payment of principal and interest under this Contract, (4) the right of Seller to recover from the undersigned any insurance or condemnation proceeds paid or delivered to the undersigned (without imposing any obligation on Seller to pay or deliver any such sums to Purchaser) and not used by Purchaser for restoration or repair of the Property, (5) the right of Seller after the occurrence of an event of default to recover from Purchaser an amount necessary to repair any damage to the Property that is caused by the willful or wanton act or omission of Purchaser or Purchaser's agents, servants, employees, contractors, subcontractors, or invitees, or (6) the right of Seller to recover from Purchaser any sums expended by Seller in the performance of or in compliance with all covenants, agreements, and provisions of any leases or other agreements or obligations assigned to Purchaser that are so expended by reason of Purchaser's neglect or refusal to perform such covenants, agreements, or provisions or to prevent Seller from recovering any damages or losses incurred or suffered by Seller

and any rents or other revenues lost as a result of Purchaser's failure to perform such covenants, agreements, and provisions.

Section 15. Waiver

The failure of either party at any time to require performance of any provision of this Contract will not limit the party's right to enforce the provision except to the extent expressly set forth in a writing signed by that party, nor will any waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision itself.

Section 16. Successor Interests

This Contract is binding on and inures to the benefit of the parties, their successors, and assigns; Seller's consent to one transfer will not constitute consent to other transfers or waiver of this section.

Section 17. Prior Agreements

This document is the entire, final, and complete agreement of the parties pertaining to the sale and purchase of the Property, and supersedes and replaces all prior or existing written and oral agreements (including any earnest money agreement) between the parties or their representatives relating to the Property.

Section 18. Notice

Any notice under this Contract must be in writing and will be effective when actually delivered in person or 5 days after being] deposited in the U.S. mail, registered or certified, return receipt requested, postage prepaid and addressed to the party at the address stated in this Contract or such other address as either party may designate by written notice to the other.

Section 19. Applicable Law

This Contract shall be governed by, and construed in accordance with, the laws of the state of Oregon.

Section 20. Costs and Attorney Fees

20.1 No Suit or Action Filed. If either party to this Contract seeks legal counsel because of a default in the payment or performance of any of its terms, the defaulting party must pay, immediately on demand, the other party's reasonable attorney fees, collection costs, costs of either a litigation or a foreclosure report (whichever is appropriate), even though no suit or action is filed thereon, and any other fees or expenses incurred by the nondefaulting party.

20.2 Arbitration or Mediation; Trial and Appeal. If any arbitration, mediation, or other proceeding is brought in lieu of litigation, or if suit or action is instituted to enforce or interpret any of the terms of this Contract, or if suit or action is instituted in a bankruptcy court for a United States District Court to enforce or interpret any of the terms of this Contract, to seek relief from an automatic stay, to obtain adequate protection, or to otherwise assert Seller's interest in a bankruptcy proceeding, the party not prevailing must pay the prevailing party's costs and disbursements, the fees and expenses of expert witnesses in determining reasonable attorney fees under ORCP 68, the actual cost of a litigation or foreclosure report, and any sums that the court may determine to be reasonable for the prevailing party's attorney fees connected with the trial and any appeal and by petition for review thereof; in addition, the Court must award the prevailing party reasonable attorney's fees.

20.3 Definitions. For purposes of this Contract, the term *attorney fees* includes all charges of the prevailing party's lawyers and their staff (including without limitation legal assistants, paralegals, word processing, and other support personnel) and any postpetition fees in a bankruptcy court. For purposes of this Contract, the term *fees and expenses* includes but is not limited to long-distance telephone charges; expenses of facsimile transmission; expenses for postage (including costs of registered or certified mail and return receipts), express mail, or parcel delivery; mileage and all deposition charges, including but not limited to court reporters' charges, appearance fees, and all costs of transcription; costs incurred in searching records; and the cost of title reports or surveyor's reports.

Section 21. Number, Gender, and Captions

As used in this Contract, the singular includes the plural, and the plural the singular. The masculine and neuter each include the masculine, feminine, and neuter, as the context requires. All captions

used in this Contract are intended solely for convenience of reference and in no way limit any of the provisions of this Contract.

Section 22. Survival of Covenants

Any covenants the full performance of which is not required before the closing or final payment of the purchase price and delivery of the deed will survive the closing and the final payment of the purchase price and the delivery of the deed and be fully enforceable thereafter in accordance with their terms.

Section 23. Condition of Property

Purchaser accepts the land, buildings, improvements,] and all other aspects of the Property in their present condition, AS IS, WHERE IS, including latent defects, without any representations or warranties from Seller or any agent or representative of Seller, expressed or implied, except for such warranties that may arise by law under the Deed and except as otherwise specifically set forth in this Contract. Purchaser agrees that Purchaser has ascertained, from sources other than Seller or any agent or representative of Seller, the condition of the Property, its suitability for Purchaser's purposes, and the applicable zoning, building, housing, and other regulatory ordinances and laws affecting the Property. Purchaser accepts the Property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the Property. Except for such warranties that may arise by law under the Deed and except as otherwise specifically stated in this Contract, Seller has made no representations with respect to such condition or suitability of the Property or such laws or ordinances.

Section 24. Statutory Disclaimer

The following disclaimer is made pursuant to ORS 93.040(2):

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS

5 TO 11, CHAPTER 424, OREGON LAWS 2007. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

The following disclaimer is made pursuant to ORS 93.040(1):

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

The following statutory notice is made pursuant to ORS 93.040(3):

THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505. ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY.

The parties agree to the terms contained herein.

Denton A. Honbeck
Denton A. Honbeck, Seller

Greg Warnock
Greg Warnock, Purchaser

Jane Honbeck
Jane Honbeck, Seller

Shelly Warnock
Shelly Warnock, Purchaser

ACKNOWLEDGMENTS

STATE OF OREGON)
) ss:
County of Polk)

This instrument was acknowledged before me on July 3, 2013, by Denton A. Honbeck and Jane A. Honbeck and Gregory L. Warnock and Shelly K Warnock.

/s/ Susan Pena
Notary Public
My commission expires: April 14, 2014



MEMORANDUM OF CONTRACT OF SALE

DATED: July 3, 2013.

BETWEEN: Denton A. Honbeck and Jane A. Honbeck

At 634 Cessna Avenue, Independence, OR 97351

AND: ("Purchaser") Gregory L. Warnock and Shelly K. Warnock

PO Box 8043, Salem, OR 97351

Pursuant to a Contract of Sale dated July 3, 2013 Seller sold to Purchaser Seller's interest in that certain property in Polk County, Oregon, more particularly described in the attached Exhibit A. The true and actual consideration for this conveyance is \$290,000.00.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DESCRIBED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

Property Tax Account No. 199337 (Polk County, Oregon)

IN WITNESS WHEREOF, the parties have caused this memorandum to be executed as of the day and year first above written.

Denton A. Honbeck
Denton A. Honbeck, Seller

Greg Warnock
Greg Warnock, Purchaser

Jane Honbeck
Jane Honbeck, Seller

Shelly Warnock
Shelly Warnock, Purchaser

ACKNOWLEDGMENTS

STATE OF OREGON)
) ss:
County of Polk)

This instrument was acknowledged before me on July 3, 2013, by Denton A. Honbeck and Jane A. Honbeck and Gregory L. Warnock and Shelly K Warnock.



/s/ Susan Pena
Notary Public
My commission expires: April 14, 2014

EXHIBIT A

(Property Description)

LOT 2, BLOCK 1, INDEPENDENCE AIRPARK, IN THE CITY OF INDEPENDENCE,
COUNTY OF POLK, STATE OF OREGON. TOGETHER WITH A NON-EXCLUSIVE
EASMENT FOR MOVING AIRCRAFT ONTO SKYWAY TAXIWAY.

EXHIBIT B

(Title Report- see attached)

EXHIBIT C

(Amortization table-see attached)

Monbeck - Warnock Contract of Sale

Exhibit C

Initials:
B.H.
J.H.
W.H.

Basic Loan Information	
Loan Amount	\$290,000.00
Interest Rate	5.000%
Loan Term (in months)	180
Monthly Payment	\$2,293.31
# of Pmts - 1st Year:	12

Extra Payments				
Interval	Amount	Start in Month	Duration	End in Month
Monthly	\$1,000.00	1	Until End of Loan	

	Month #	Payment	Interest	Principal	Extra Pmt	Balance
7-3-13	1	3,293.31	1,208.33	2,084.98	1,000.00	287,915.02
8-5	2	3,293.31	1,199.65	2,093.66	1,000.00	285,821.36
9-5	3	3,293.31	1,190.92	2,102.39	1,000.00	283,718.97
10-5	4	3,293.31	1,182.16	2,111.15	1,000.00	281,607.82
11-5	5	3,293.31	1,173.37	2,119.94	1,000.00	279,487.88
12-5	6	3,293.31	1,164.53	2,128.78	1,000.00	277,359.10
1-5-14	7	3,293.31	1,155.66	2,137.65	1,000.00	275,221.45
2-5	8	3,293.31	1,146.76	2,146.55	1,000.00	273,074.90
3-5	9	3,293.31	1,137.81	2,155.50	1,000.00	270,919.40
4-5	10	3,293.31	1,128.83	2,164.48	1,000.00	268,754.92
5-5	11	3,293.31	1,119.81	2,173.50	1,000.00	266,581.42
6-5	12	3,293.31	1,110.76	2,182.55	1,000.00	264,398.87

Year 1 Totals	\$39,519.72	\$13,918.59	\$25,601.13	\$12,000.00
Cumulative Totals	\$39,519.72	\$13,918.59	\$25,601.13	\$12,000.00

	Month #	Payment	Interest	Principal	Extra Pmt	Balance
7-5	13	3,293.31	1,101.66	2,191.65	1,000.00	262,207.22
8-5	14	3,293.31	1,092.53	2,200.78	1,000.00	260,006.44
9-5	15	3,293.31	1,083.36	2,209.95	1,000.00	257,796.49
* POA 10-5	16	3,293.31	1,074.15	2,219.16	1,000.00	255,577.33
11-5	17	3,293.31	1,064.91	2,228.40	1,000.00	253,348.93
* \$2293.31 (12-5)	18	3,293.31	1,055.62	2,237.69	1,000.00	251,111.24
1-5-15	19	3,293.31	1,046.30	2,247.01	1,000.00	248,864.23
2-5	20	3,293.31	1,036.93	2,256.38	1,000.00	246,607.85
3-5	21	3,293.31	1,027.53	2,265.78	1,000.00	244,342.07
4-5	22	3,293.31	1,018.09	2,275.22	1,000.00	242,066.85
5-5	23	3,293.31	1,008.61	2,284.70	1,000.00	239,782.15

* LAST
COMPLETE
PAYMENT
X 100 EX
PAYMENT

Exhibit 1

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24	3,293.31	999.09	2,294.22	1,000.00	237,487.93
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Year 2 Totals	\$39,519.72	\$12,608.78	\$26,910.94	\$12,000.00
Cumulative Totals	\$79,039.44	\$26,527.37	\$52,512.07	\$24,000.00

2015	Month #	Payment	Interest	Principal	Extra Pmt	Balance
6-5	25	3,293.31	989.53	2,303.78	1,000.00	235,184.15
7-5	26	3,293.31	979.93	2,313.38	1,000.00	232,870.77
8-5	27	3,293.31	970.29	2,323.02	1,000.00	230,547.75
9-5	28	3,293.31	960.62	2,332.69	1,000.00	228,215.06
10-5	29	3,293.31	950.90	2,342.41	1,000.00	225,872.65
11-5	30	3,293.31	941.14	2,352.17	1,000.00	223,520.48
12-5	31	3,293.31	931.34	2,361.97	1,000.00	221,158.51
1-5-16	32	3,293.31	921.49	2,371.82	1,000.00	218,786.69
	33	3,293.31	911.61	2,381.70	1,000.00	216,404.99
	34	3,293.31	901.69	2,391.62	1,000.00	214,013.37
	35	3,293.31	891.72	2,401.59	1,000.00	211,611.78
	36	3,293.31	881.72	2,411.59	1,000.00	209,200.19

Year 3 Totals	\$39,519.72	\$11,231.98	\$28,287.74	\$12,000.00
Cumulative Totals	\$118,559.16	\$37,759.35	\$80,799.81	\$36,000.00

Month #	Payment	Interest	Principal	Extra Pmt	Balance
37	3,293.31	871.67	2,421.64	1,000.00	206,778.55
38	3,293.31	861.58	2,431.73	1,000.00	204,346.82
39	3,293.31	851.45	2,441.86	1,000.00	201,904.96
40	3,293.31	841.27	2,452.04	1,000.00	199,452.92
41	3,293.31	831.05	2,462.26	1,000.00	196,990.66
42	3,293.31	820.79	2,472.52	1,000.00	194,518.14
43	3,293.31	810.49	2,482.82	1,000.00	192,035.32
44	3,293.31	800.15	2,493.16	1,000.00	189,542.16
45	3,293.31	789.76	2,503.55	1,000.00	187,038.61
46	3,293.31	779.33	2,513.98	1,000.00	184,524.63
47	3,293.31	768.85	2,524.46	1,000.00	182,000.17
48	3,293.31	758.33	2,534.98	1,000.00	179,465.19

Year 4 Totals	\$39,519.72	\$9,784.72	\$29,735.00	\$12,000.00
Cumulative Totals	\$158,078.88	\$47,544.07	\$110,534.81	\$48,000.00

Month #	Payment	Interest	Principal	Extra Pmt	Balance
49	3,293.31	747.77	2,545.54	1,000.00	176,919.65

50	3,293.31	737.17	2,556.14	1,000.00	174,363.51
51	3,293.31	726.51	2,566.80	1,000.00	171,796.71
52	3,293.31	715.82	2,577.49	1,000.00	169,219.22
53	3,293.31	705.08	2,588.23	1,000.00	166,630.99
54	3,293.31	694.30	2,599.01	1,000.00	164,031.98
55	3,293.31	683.47	2,609.84	1,000.00	161,422.14
56	3,293.31	672.59	2,620.72	1,000.00	158,801.42
57	3,293.31	661.67	2,631.64	1,000.00	156,169.78
58	3,293.31	650.71	2,642.60	1,000.00	153,527.18
59	3,293.31	639.70	2,653.61	1,000.00	150,873.57
60	3,293.31	628.64	2,664.67	1,000.00	148,208.90

Year 5 Totals	\$39,519.72	\$8,263.43	\$31,256.29	\$12,000.00	
Cumulative Totals	\$197,598.60	\$55,807.50	\$141,791.10	\$60,000.00	

Month #	Payment	Interest	Principal	Extra Pmt	Balance
61	3,293.31	617.54	2,675.77	1,000.00	145,533.13
62	3,293.31	606.39	2,686.92	1,000.00	142,846.21
63	3,293.31	595.19	2,698.12	1,000.00	140,148.09
64	3,293.31	583.95	2,709.36	1,000.00	137,438.73
65	3,293.31	572.66	2,720.65	1,000.00	134,718.08
66	3,293.31	561.33	2,731.98	1,000.00	131,986.10
67	3,293.31	549.94	2,743.37	1,000.00	129,242.73
68	3,293.31	538.51	2,754.80	1,000.00	126,487.93
69	3,293.31	527.03	2,766.28	1,000.00	123,721.65
70	3,293.31	515.51	2,777.80	1,000.00	120,943.85
71	3,293.31	503.93	2,789.38	1,000.00	118,154.47
72	3,293.31	492.31	2,801.00	1,000.00	115,353.47

Year 6 Totals	\$39,519.72	\$6,664.29	\$32,855.43	\$12,000.00	
Cumulative Totals	\$237,118.32	\$62,471.79	\$174,646.53	\$72,000.00	

Month #	Payment	Interest	Principal	Extra Pmt	Balance
73	3,293.31	480.64	2,812.67	1,000.00	112,540.80
74	3,293.31	468.92	2,824.39	1,000.00	109,716.41
75	3,293.31	457.15	2,836.16	1,000.00	106,880.25
76	3,293.31	445.33	2,847.98	1,000.00	104,032.27
77	3,293.31	433.47	2,859.84	1,000.00	101,172.43
78	3,293.31	421.55	2,871.76	1,000.00	98,300.67
79	3,293.31	409.59	2,883.72	1,000.00	95,416.95

Exhibit 1

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80	3,293.31	397.57	2,895.74	1,000.00	92,521.21
81	3,293.31	385.51	2,907.80	1,000.00	89,613.41
82	3,293.31	373.39	2,919.92	1,000.00	86,693.49
83	3,293.31	361.22	2,932.09	1,000.00	83,761.40
84	3,293.31	349.01	2,944.30	1,000.00	80,817.10

Year 7 Totals	\$39,519.72	\$4,983.35	\$34,536.37	\$12,000.00	
Cumulative Totals	\$276,638.04	\$67,455.14	\$209,182.90	\$84,000.00	

Month #	Payment	Interest	Principal	Extra Pmt	Balance
85	3,293.31	336.74	2,956.57	1,000.00	77,860.53
86	3,293.31	324.42	2,968.89	1,000.00	74,891.64
87	3,293.31	312.05	2,981.26	1,000.00	71,910.38
88	3,293.31	299.63	2,993.68	1,000.00	68,916.70
89	3,293.31	287.15	3,006.16	1,000.00	65,910.54
90	3,293.31	274.63	3,018.68	1,000.00	62,891.86
91	3,293.31	262.05	3,031.26	1,000.00	59,860.60
92	3,293.31	249.42	3,043.89	1,000.00	56,816.71
93	3,293.31	236.74	3,056.57	1,000.00	53,760.14
94	3,293.31	224.00	3,069.31	1,000.00	50,690.83
95	3,293.31	211.21	3,082.10	1,000.00	47,608.73
96	3,293.31	198.37	3,094.94	1,000.00	44,513.79

Year 8 Totals	\$39,519.72	\$3,216.41	\$36,303.31	\$12,000.00	
Cumulative Totals	\$316,157.76	\$70,671.55	\$245,486.21	\$96,000.00	

Month #	Payment	Interest	Principal	Extra Pmt	Balance
97	3,293.31	185.47	3,107.84	1,000.00	41,405.95
98	3,293.31	172.52	3,120.79	1,000.00	38,285.16
99	3,293.31	159.52	3,133.79	1,000.00	35,151.37
100	3,293.31	146.46	3,146.85	1,000.00	32,004.52
101	3,293.31	133.35	3,159.96	1,000.00	28,844.56
102	3,293.31	120.19	3,173.12	1,000.00	25,671.44
103	3,293.31	106.96	3,186.35	1,000.00	22,485.09
104	3,293.31	93.69	3,199.62	1,000.00	19,285.47
105	3,293.31	80.36	3,212.95	1,000.00	16,072.52
106	3,293.31	66.97	3,226.34	1,000.00	12,846.18
107	3,293.31	53.53	3,239.78	1,000.00	9,606.40
108	3,293.31	40.03	3,253.28	1,000.00	6,353.12

Year 9 Totals	\$39,519.72	\$1,359.05	\$38,160.67	\$12,000.00	
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Exhibit 1
Page 26 of 27

Cumulative Totals	\$355,677.48	\$72,030.60	\$283,646.88	\$108,000.00
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Month #	Payment	Interest	Principal	Extra Pmt	Balance
109	3,293.31	26.47	3,266.84	1,000.00	3,086.28
110	3,099.14	12.86	3,086.28	805.83	0.00
Year 10 Totals	\$6,392.45	\$39.33	\$6,353.12	\$1,805.83	
Cumulative Totals	\$362,069.93	\$72,069.93	\$290,000.00	\$109,805.83	

Verified Correct Copy of Original 8/17/2015.

1 Gregory L. Warnock
2 Shelly K. Warnock
3 634 Cessna St.
4 Independence, OR 97351

FILED
POLK COUNTY OREGON

15 AUG -7 PM 4:29

TRIAL COURT ADMINISTRATOR
ENTERED BY _____

5 IN THE CIRCUIT COURT OF THE STATE OF OREGON
6 FOR THE COUNTY OF POLK
7 CIVIL DEPARTMENT
8

9 DENTON A. HONBECK

Case No.: 15CV17952

10 JANE A. HONBECK

11 Plaintiffs,

ANSWER

12 VS.

13 GREGORY L. WARNOCK

14 SHELLEY K. WARNOCK

15 Defendants
16
17

18 Defendants want to seek the counsel of this court on the issue of a potential conflict of interest if this case is
19 to be held by Judge Hill, due to his acts as plaintiff's attorney against Gregory L. Warnock, and Shelly K.
20 Warnock in a previous case in Polk County, before Judge Hill was elected to the Bench. The Defendants will
21 rely and respect this Court's decision on this matter.

22 **COMES NOW**, the Defendants, Gregory L. Warnock, and Shelly K. Warnock, as an individuals, in
23 answering the allegations of the complaint on file herein, affirms, denies, and alleges as follows:

24 Answering the allegations in paragraphs 1-2, of the complaints herein, the defendant affirms all
25 facts.

26 Answering the allegations in paragraph 3, of the complaints herein, the defendant affirms the
allegations, except the allegation that states "...the contract provides for monthly payments of \$3,293.31."
The signed Land Sales Contract (Contract) stipulates that monthly payments of Principle and Interest
Payments are to be made, totaling \$2,293.3. The Contract also allows for an additional \$1,000.00 payment
toward equity.

ANSWER - 1

1 The Contract defines "Mortgage Payment" as "Principle, Interest and Taxes" (on page 12 of 27 in the
2 Plaintiff's exhibit #, paragraph (1)). On page 23-27 of the same exhibit, the amortization table clearly
3 shows separate
4 payments of \$1,000.00 for the purpose of calculating the total balance due for each month. It is unusual for
any mortgage vendor to apply a monthly extra payment as part of the Principle payment on which interest
is calculated.

5 Answering the allegations in paragraph 4, of the complaints herein, the defendants affirm all
6 facts.

7 Answering the allegations in paragraph 5, of the complaints herein, the defendants affirm the
8 allegations, except that they deny that the defendants failed to pay in full the December and January
9 Payments. Principle and Interest payments were made to plaintiffs in December 2011, and in January 2015,
10 as is noted on Plaintiff's exhibit #, page 23 of 27.

11 Answering the allegations in paragraph 6-7, of the complaints herein, the defendants affirm the
12 facts, except to note that the plaintiffs did NOT accelerate the balance. In fact, the plaintiffs made no such
13 effort to accelerate payments in accordance with the Contract, but did keep in regular communication with
14 the defendants, until they irresponsibly filed for an FED eviction in complete disregard of the Contract, in
15 March 2015.

16 Answering the allegations in paragraph 8, of the complaints herein, the defendants deny all facts.
17 The Contract allows for a default, if a mortgage payment is not made within 30 after it is due (Plaintiff
18 exhibit #1, page 12 of 27, par. (1)), but the Contract also requires the Seller to give official notice to the
19 Buyers, specifying the nature of the default, and provides a 90 day period of time for curative action, before
20 any other curative action may be commenced (Exhibit #1, page 12 of 27, par (3)), and

21 ORS 93.915 clearly states how the notice of default must be served, and that the information in
22 the default notice must presume to be accurate. The information for the remedies stated in the notice of
23 default were not provided in accordance with the Contract or in the Statutes. The Plaintiff gave less than
24 20 days for a remedy of full payment of past due payments, including fees and the extra equity payments.
25 The Contract (Plaintiff exhibit #1, Pages 12ff) gives specific remedies after the plaintiff serves notice of
26 default. A 20 day notice to pay in full is not one of the Contract's remedies. Filing a suit in equity for strict
foreclosure is also NOT a remedy allowed in the Contract. The Contract limits the remedies as stated in
Paragraph 14.2, and further cites ORS 93.905-945 as statutes to rely on after the initial notice of the remedy
period of 90 days is (should have been) served.

Defendants were served with an official notice of default, by plaintiff's attorney, giving the required notice
of the nature of the default on June 4, 2015. The Contractual 90 day remedy period following that service
date is September 2, 2015.

Plaintiff's right to reimbursement for legal costs should not begin until June 4, 2015, since that is the date
of service of the default. Any other legal fees would be inappropriate, especially the March 2015 FED case
fees, as the Plaintiff's evidently assert. (This Court granted fees to the Defendants in the FED case, of
March 2015, not the Plaintiff.)

25 Answering the allegations in paragraphs 9-12, of the complaints herein, the defendants affirm all
26 facts.

Answering the allegations in paragraph 13, of the complaints herein, the defendants deny all


1 facts. Plaintiff's have the right to enforce the Contract in this case, by relying on the Remedies of Default in
2 the Contract (Plaintiff Exhibit #1, page 12ff, Paragraph 14.2f). Plaintiff is claiming a suit of equity, strict
foreclosure of Land Sales Contract, which is not one of the Contract's default remedies.

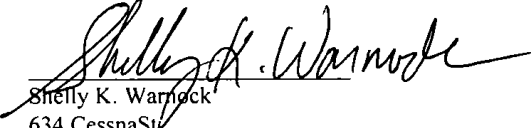
3 Further, even if the Court allows for consideration of a claim for strict foreclosure, in opposition to the
4 actual signed Contract between parties, a strict foreclosure option should not be considered because the
Defendant's equity payments (and total equity) in comparison to the purchase price is substantial, and
could have been applied to unpaid principle, if this was a conventional loan.

5 The total equity paid into the total loan is \$39,000.00 which should be seen as inequitable to the Defendants,
6 if a strict foreclosure was applied in this case. The total payments due in the Contract (from February 2015
7 to August 2015) totals only \$16,0553.00 plus late fees. Also, substantial improvements to the property
have been made at the cost of the defendants that now provide an estimated loan value of the property to be
around \$325,000. 00. A strict foreclosure, violate the actual Contract's remedies of default, and would be
inequitable to the Defendants for the reasons stated in this answer.

8
9 WHEREFORE, Defendants pray that the Plaintiff's motion for a strict foreclosure, and a limited
10 judgment be denied, and that no Plaintiff costs or fees be granted, in this case, and

- 11 1. Requiring plaintiffs to allow for a reasonable and equitable default remedy period, according to
12 the Contract, which provides 90 days from the notice of default to remedy before any other
curative action is commenced (Contract Par 14.1, (3), plus an additional 120 days as stipulated by
13 ORS 93.915(3)(1), which provides the minimum required remedy after a default is properly
commenced by the Contract.
- 14 2. OR, Granting Defendants and Plaintiff's 30 days to agree to a, written amendment to the Contract
15 allowing for a new, equitable remedy to foreclosure (But if a new amendment cannot be agreed to
by both parties, the Defendant's first prayer for relief should stand.

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Gregory L. Warnock
634 CessnaSt.
Independence, OR 97351

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Shelly K. Warnock
634 CessnaSt.
Independence, OR 97351

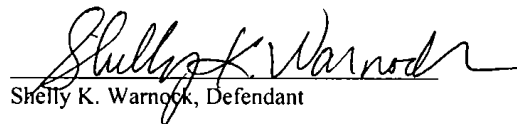
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Certificate of Service

I certify that on this date, August 7, 2015, I served the foregoing ANSWER upon the Plaintiff, by US. Mail.



Gregory Warnock, Defendant



Shelly K. Warnock, Defendant

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

AFFIDAVIT OF PLAINTIFF
DENTON HONBECK

STATE OF OREGON, }
County of Polk. } ss.

I, Denton Honbeck, being first duly sworn, depose and say:

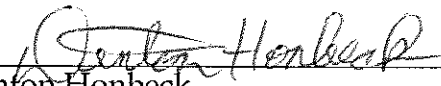
1. My wife and I are the plaintiffs herein.
2. Defendants prepared the landsales contract, which is attached hereto as Exhibit 1 and by reference incorporated herein.
3. We entered into the landsales contract with Defendants on or about July 3, 2013. The purchase price is \$290,000 with interest at the rate of 5%.
4. The contract provides for monthly payments of \$3,293.31 beginning July 3, 2013, and continuing on the 5th day of each month thereafter until December 31, 2015, at which time all amounts are due and owing.
5. Defendants paid only \$2,293.31 for December 2014 and January 2015.
6. Defendants did not pay any installments from February 2015 through June 2015, after which the balance was accelerated. Defendants have failed to pay the balance owing.

7. Defendants now owe on the contract the sum of \$255,994.31, with interest at the rate of 5% per annum from July 8, 2015, until paid.

8. In addition, Defendants owe the following in order to satisfy the contract:

- a. \$410 for IAHA Homeowner's fees and ODA Access Fees;
- b. \$1,050 for late fees;
- c. Attorney fees and costs, including \$850 for foreclosure guaranty.

I make this affidavit in support of our motion for summary judgment.


Denton Honbeck

SUBSCRIBED AND SWORN to before me this 24 day of August, 2015.




NOTARY PUBLIC FOR OREGON

H:\T\realproperty\Honbeck\AffidavitDenton.wpd

CONTRACT OF SALE

Opening Clause:

DATED: July 3, 2013.

BETWEEN: , Denton A. Honbeck and Jane A. Honbeck, husband and wife

at 634 Cessna Avenue, Independence, OR 97351

AND: , Gregory L. Warnock and Shelly K. Warnock, husband and wife

PO Box 8043, Salem, OR 97303

Seller owns the real property located in Polk County, Oregon, and described in attached Exhibit A. subject (only) to those encumbrances described in attached Exhibit B (the "Real Property") and the personal property described in attached Exhibit B;

Seller agrees to sell the Property to Purchaser and Purchaser agrees to buy the Property from Seller for the price and on the terms and conditions set forth below:

Tax Statement:

Until a change is requested, all tax statements shall be sent to Denton A. Honbeck, 10550 Clow Corner Rd, Dallas, OR 97338.

Section 1. Purchase Price and Payment

1.1 Total Purchase Price. Purchaser promises to pay Seller as the total purchase price for the Property the sum of \$ 290,000 (US).

1.2 Payment of Total Purchase Price. The total purchase price will be paid as follows:

1.2.1 Down Payment. No down payment is required.

1.2.2 Interest Rate and Scheduled Payment Dates. Interest on the balance and purchase price of \$290,000 will accrue at the rate of 5.00% per annum, Fee Simple. The unpaid balance of the purchase price will be paid in monthly installments of principal and all accrued but unpaid interest,

with the first installment due on July 3, 2013, and with subsequent installments due on the 5th day of each month thereafter. See Exhibit C (amortization tables and payment schedule).

1.2.3 Maturity Date. All unpaid principal and all accrued but unpaid interest must be paid in full on _____ or before December 31, 2015.

1.3 Prepayments. Purchaser may on any installment due date prepay all or any portion of the unpaid principal without penalty. All prepayments will be applied to the principal first, then to the last installment of principal scheduled under this Contract, and will not excuse Purchaser from making the regular monthly payments when due under this Contract, unless agreed to in writing by both the Seller and Purchaser, until the remaining balance has been paid in full. This paragraph applies to any payments due under this Contract that are accelerated because of Purchaser's default under any of the provisions of this Contract.

1.5 Place of Payments. All payments to Seller must be made to Denton A. Honbeck, 10550 Clow Corner Rd, Dallas, OR 97338

Section 2. Taxes and Liens

2.1 Obligation to Pay. All ad valorem real property taxes and all governmental or other assessments levied against the Property for the current and subsequent tax year will be paid by the Seller during the life of the Contract.

2.3 Omission from Tax Rolls. Seller covenants and warrants to Purchaser that all the Property and its improvements are fully reflected on the real property assessment rolls of the county. Seller will indemnify and hold Purchaser harmless from and against any subsequent claim or assessment on account of any of the Property or its current improvements being omitted for any reason from the rolls.

2.4 Classification. The Property is classified and specially assessed as a residential property. Purchaser will be responsible for and will pay when due any additional taxes, penalties, or interest resulting from any disqualification of the Property from such classification and special assessment arising from or after the Maturity Date. Seller will pay when due all additional taxes, penalties, and interest resulting from any disqualification of the Property from such classification and special assessment arising before the Maturity Date and not attributable to Purchaser.

2.5 Tax Statements. Seller will provide Purchaser with written evidence reasonably satisfactory to Purchaser that all taxes and assessments have been paid when due. Seller will submit this evidence on the request of Purchaser, which request must be made no more frequently than once each calendar year of such taxes for the previous tax year.

2.6 Liens and Encumbrances. Purchaser will otherwise keep the Property free from all liens and encumbrances that may be [lawfully] imposed on the Property after the date of signing of this land sale contract and, for the length of the Contract.

Section 3. Closing

3.1 Closing Date. This transaction shall be effective on July 3, 2013. As used in this Contract, the *Closing Date* means the date on which this Contract is signed by Seller and Purchaser.

Section 4. Possession and Existing Tenancies

4.1 Possession. Purchaser will be entitled to possession of the Property from and after July 3, 2013, however, Seller and Seller's agents may enter on the Property at reasonable times on not less than 3 business days prior with written notice to Purchaser and consent by Purchaser for the purpose of inspecting the Property. In no event will Seller or Seller's agent interfere with the rights of any tenant of all or part of the Property.

Section 5. Maintenance and Alterations

5.1 Maintenance. Purchaser will keep all buildings, other improvements, and landscape now existing or that will be placed on the Property in at least as good condition and repair as of the date that possession is delivered to Purchaser, and will not make any substantial improvements or alterations that reduce the value of the Property for security purposes without the prior written consent of Seller.

5.1.1 Improvements. If Purchaser desires to alter or further improve all or any portion of the Property, Purchaser must first obtain Seller's written consent before proceeding to do or permit any work or to order any services or materials with respect to that work. As a condition of granting its consent, among other conditions, Seller may require Purchaser to provide a construction and completion bond or other security in an amount and of a nature satisfactory to Seller to cover the proposed costs of construction of the proposed alterations or improvements. All alterations and improvements constructed by or for Purchaser must be completed by reputable Oregon licensed

contractors without defects in conformance, lien-free, with plans, specifications, and drawings approved beforehand in writing by Seller as provided above, and in conformance with standards in the industry. No approval by Seller will be deemed a representation or warranty of Seller that the approved items or conduct are otherwise lawful, safe, or appropriate, or relieve Purchaser from strict compliance with all other provisions of this Contract and all applicable law.

5.1.2 Prohibited Activities. Purchaser will not knowingly use or suffer the use of all or any of the Property for any "nuisance" as defined in ORS 105.555, or so as to constitute an *illegal drug manufacturing site* as that term is defined in ORS 453.858(2), as those statutes may now or hereafter be amended, supplemented, or superseded, or otherwise do or allow any act or omission on or about the Property that could subject the Property or Seller's or Purchaser's interest in the Property to forfeiture or the risk of forfeiture.

5.1.3 Governmental Damage. If any damage or destruction of the Property or any portion of it is caused by any governmental or quasi-governmental authority, and to the extent that the same is not a compensable taking under the state or federal constitution, or directly caused by the act or omission of Seller, Purchaser will promptly repair and restore the same at its expense.

5.1.4 Timber and Minerals. Purchaser will not cut or remove any timber or forest products from the Property. Purchaser will not extract, process, mine, or otherwise exploit any oil, gas, mineral, or other valuable deposit on or under the Property.

5.1.5 Hazardous Substances. Purchaser will comply fully with all laws pertaining to the protection of human health and the environment, including but not limited to employee and community right-to-know laws and all laws regarding the use, generation, storage, transportation, treatment, disposal, or other handling of Hazardous Substances (as defined in Section 8.5 below). Purchaser will promptly advise Seller in writing of any Hazardous Substances regulated by such laws that are used, generated, manufactured, stored, transported, or otherwise handled on the Property. Purchaser will exercise extreme care in handling any Hazardous Substances and will not cause or permit Hazardous Substances to be spilled, leaked, disposed of, or otherwise released on the Property.

Section 6. Insurance

6.1 Property Damage Insurance. Purchaser will procure and maintain policies of all-risk/fire insurance with standard extended coverage endorsements a replacement cost value basis covering all improvements on the Property in an amount sufficient to avoid application of any coinsurance clause and with loss payable to Denton A. Honbeck and Jane A. Honbeck, and Purchaser as their

respective interests may appear. The policies must be primary with respect to all covered risks, and must be written in such form with such terms and by such insurance companies reasonably acceptable to Seller. Purchaser will deliver to Seller certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of 10 days' written notice to Seller. In the event of loss, Purchaser will give immediate notice to Seller. Seller may make proof of loss if Purchaser fails to do so within 15 days of the casualty.

6.2 Liability Insurance. During the term of this Contract, Purchaser will maintain commercial general liability insurance with a combined single limit of not less than \$250,000.00 and \$300,000.00 for damage to property. Such insurance must be written on an occurrence basis and must be primary with respect to all other insurance covering any of the insured risks; must cover all risks arising directly or indirectly out of Purchaser's activities on or any condition of the Property, whether or not related to an occurrence caused or contributed to by Seller's negligence; must include a contractual liability clause to protect Purchaser against the claims of Seller on account of the obligations assumed by Purchaser under Section 7; and must protect Seller and Purchaser against claims of third persons. Such policies must be written in such form, with such terms and by such insurance companies reasonably acceptable to Seller. Purchaser will deliver to Seller certificates of coverage from each insurer containing a stipulation that coverage will not be canceled or diminished without a minimum of 15 days' written notice to Seller.

6.3 Purchaser's Report on Insurance. Within 60 days after the close of its fiscal year, Purchaser will furnish to Seller a report on each existing policy of insurance required under this Contract showing:

- (1) The name of the insurer;
- (2) The risks insured;
- (3) The amount of the policy;
- (4) The property insured, the then-current replacement value of the property, and the manner of determining that value; and
- (5) The expiration date of the policy.

6.5 Application of Proceeds. All proceeds of any insurance on the Real Property must be paid to and held by Seller. If Purchaser elects to restore the Property, Purchaser will repair or replace the

damaged or destroyed improvements in a manner satisfactory to Seller. On satisfactory proof of expenditure of the Property to at least its condition and value immediately before the damage or destruction, Seller will pay or reimburse Purchaser from the proceeds (net of Seller's reasonable cost of recovering and administering such proceeds and monitoring Purchaser's restoration activities for the reasonable cost of repair or restoration to the extent of such proceeds received by Seller. If Purchaser elects not to restore the Property, Seller will retain a sufficient amount of the proceeds to pay all amounts owed Seller under this Contract, and will pay the balance to Purchaser. Any proceeds that have not been paid out within 90 days after their receipt and that Purchaser has not committed to the repair or restoration of the Property must be used to prepay first accrued interest and then principal of Purchaser's indebtedness.

Section 7. Indemnification

7.1 Purchaser's Indemnification of Seller. Purchaser will forever indemnify, reimburse, and hold Seller harmless and, at Seller's election, defend Seller for, from, and against any and all claims, costs, expenses (including attorney fees), losses, damages, fines, charges, actions, or other liabilities of any description arising out of or in any way connected with (1) Purchaser's possession or use of the Property, (2) Purchaser's conduct with respect to the Property, (3) any condition of the Property to the extent that the same arises from or after the Closing Date and is not caused or contributed to by Seller, or (4) Purchaser's breach of any warranty or representation made by Purchaser in this Contract. In the event of any litigation or proceeding brought against Seller and arising out of or in any way connected with any of the above events or claims, against which Purchaser agrees to defend Seller, Purchaser will, on notice from Seller, vigorously resist and defend such actions or proceedings in consultation with Seller through legal counsel reasonably satisfactory to Seller.

7.2 Seller's Indemnification of Purchaser. Seller will forever indemnify, reimburse, and hold Purchaser harmless and, at Purchaser's election, defend Purchaser for, from, and against any and all claims, costs, expenses (including attorney fees), losses, damages, fines, charges, actions, or other liabilities of any description arising out of or in any way connected with (1) Seller's possession or use of the Property, (2) Seller's conduct with respect to the Property, (3) any condition of the Property to the extent that the same exists on the Closing Date and is not caused or contributed to by Purchaser, or (4) Seller's breach of any warranty or representation made by Seller in this Contract. In the event of any litigation or proceeding brought against Purchaser and arising out of or in any way connected with any of the above events or claims, against which Seller agrees to defend Purchaser, Seller will, on notice from Purchaser, vigorously resist and defend such actions or proceedings in consultation with Purchaser through legal counsel reasonably satisfactory to Purchaser.

7.3 Indemnification Scope. Wherever this Contract obligates a party to indemnify, hold harmless, or defend the other party, the obligations will run to the family members, invitees, agents, and employees, directors, officers, agents, partners, and employees of such other party and will survive any termination or satisfaction of this contract. Such obligations with respect to the acts or omissions of either party will include the acts or omissions of any director, officer, partner, agent, employee, contractor, tenant, invitee, or permittee of such party.

Section 8. Representations, Warranties, and Covenants of Seller

8.1 Covenants of Title. Seller warrants that Seller is the owner of title to the Property free of all liens and encumbrances except those referred to on attached Exhibit 4 and will defend such title from the lawful claims of persons claiming superior title.

8.2 Authority. Seller represents that Seller has obtained all requisite authorizations for the execution and delivery by Seller of this Contract and the performance of the transactions contemplated by this Contract, and that the execution and delivery of this Contract are made pursuant to such authorizations.

8.3 No Brokers. Seller has not employed any broker or finder in connection with the transactions contemplated by this Contract and has taken no [other] action, which action would give rise to a valid claim against Purchaser for a brokerage commission, finder's fee, or other like payment.

8.4 Litigation. There are no pending claims or litigation or threats of claims or litigation or other matters of which Seller is aware or by the exercise of reasonable diligence of which Seller should be aware that could adversely affect Purchaser's title, use, or enjoyment of the Property.

8.5 Hazardous Substances. No Hazardous Substance has been disposed of, spilled, leaked, or otherwise released on, under, or from the Property or has otherwise come to be located on or under the Property. No Hazardous Substance has been disposed of, spilled, leaked, or otherwise released on, under, or from property adjacent to or in the immediate vicinity of the Property. No wastes, including without limitation garbage and refuse, have been disposed of on the Property and there are no underground storage tanks on the Property. The term *Hazardous Substance* means any hazardous, toxic, radioactive, or infectious substance, material, or waste as defined, listed, or regulated under any law pertaining to the protection of human health or the environment, and includes without limitation petroleum oil and its fractions.

8.6 Compliance with Laws. The Property and every portion of it, and all activities conducted on the Property, are in compliance with all applicable federal, state, and local statutes, regulations, and ordinances. Seller is not aware of and has not received notice of any past violation of any applicable federal, state, or local statutes, regulations, or ordinances.

8.7 Nonforeign Status. Seller warrants that Seller is not a *foreign person* as defined in IRC §1445(f)(3) and that Seller is not a “transferor” subject to withholding under ORS 314.258 (“ORFIRPTA”) and that each such warranty will be true as of closing. Seller will deliver to Purchaser and the escrow agent at closing a Certificate of Nonforeign Status, in form complying with the requirements of IRC §1445 and related regulations, setting forth Seller’s address and United States taxpayer identification number and certifying that Seller is not a *foreign person* as defined in IRC §1445(f)(3) (“FIRPTA Certificate”), and a certificate and other documentary evidence complying with ORFIRPTA, reasonably acceptable to Purchaser and the escrow agent (and any “authorized agent” involved in the transaction) and sufficient to assure Purchaser and the escrow agent (and any such authorized agent) that no withholding is required under ORFIRPTA (“ORFIRPTA Certificate”).

8.8 Permits and Licenses. Seller agrees to convey, assign, or otherwise transfer all permits, authorizations, licenses, or other documents relating to or required for the operation of the Property, unless otherwise prohibited by the terms or conditions of such permit, authorization, license, or other document. Seller will cooperate with Purchaser in obtaining any permits, consents, authorizations, or licenses necessary to the operation of the Property; however, Seller will not be required to incur any expense relating thereto unless Purchaser has first advanced funds sufficient to cover all Seller’s reasonably anticipated out-of-pocket expenses; furthermore, Seller will promptly refund to Purchaser any excess funds so advanced, and Purchaser will reimburse Seller for any shortfall in funds so advanced.

8.9 No Further Contracts. Seller represents that there are no contracts, leases, or agreements relating to the Property that will be binding on the Property or Purchaser after the Closing Date.

8.10 No Wetlands or Fill. Seller warrants that as of the Closing Date, Property contains no wetlands or other water bodies or any fill currently subject to regulation under §404 of the Clean Water Act (33 USC §1344) or ORS 196.600–196.990 and will not be in violation of these laws or regulations.

Seller further warrants that as of the Closing Date Seller has not received any notice, and does not have actual knowledge, of any pending or threatened claim, action, demand, suit, proceeding, hearing, or governmental study or investigation against or involving the Property and related in any

way to the fill or removal of the material in or from any wetland located on the Property and Purchaser releases Seller from any and all claims of liability arising out of such wetlands or fill.

8.11 Disclosure. Seller has fully disclosed in writing and provided to Purchaser all material information in Seller's possession or that Seller owns or controls that relates to the Property, its condition, and the title to the Property.

Section 9. Existing Encumbrance

9.1 Obligation to Pay. The Property is currently subject to a mortgage (Equity Line of Credit) with Sterling Bank, as mortgagor and Denton A. and Jane A. Honbeck as mortgagee, dated 03/05/2012, recorded on 03/15/2012, in Book 2012, Page 002457, County Records, Polk County, Oregon. Seller represents, warrants, and covenants to Purchaser that (1) no default exists under the Prior Lien and no event has occurred or failed to occur and no condition exists or does not exist that, with or without notice and the passage of time, could ripen into such a default and (2) Seller will make all payments under the Prior Lien when due and will obey and observe all the terms of such instrument, except for those matters that are to be performed by Purchaser under the terms of this Contract. If either Seller or Purchaser receives notice from or on behalf of the holder of the Prior Lien of breach of any of the terms of the Prior Lien, the party receiving the notice will immediately forward a copy of the notice to the other party, and (3) Seller has no other liens.

10.2 Failure to Pay. If Seller fails to perform any obligation or fails to make any payment required by the Prior Lien when due, Purchaser will have the right to correct the default or to make any part or all of the payment payable to Seller under this Contract directly to the holder of the Prior Lien or third party to whom the payment is required to be made under the Prior Lien until Seller's obligation is satisfied. Purchaser's reasonable costs in performing Seller's obligation with interest at the rate of 5.00% per annum from the date of expenditure will be credited to the next installments coming due under the Contract as though paid directly to Seller.

10.3 Obligations of Purchaser. Purchaser will not cause or suffer any act or failure to act that if attributed to Seller might cause a default under any of the provisions of the Prior Lien.

10.4 Additional Requirements. To the extent required of Seller under the Prior Lien, Purchaser will (1) maintain with Seller any additional reserves or insurance coverage required to be maintained by Seller; (2) provide Seller and the holder of the Prior Lien with any notices, certificates, or policies of insurance required under the Prior Lien; and (3) repair and maintain the Property, provide

operating reports, and apply casualty and condemnation proceeds first in the manner required in the Prior Lien and then in compliance with the provisions contained in this Contract.

Section 11. Subordination

11.1 Subordination. Seller agrees to subordinate Seller's fee interest in the Property to the lien of a trust deed or mortgage (the "Mortgage") to be placed on the Property by Purchaser as long as each of the following conditions is satisfied: (1) the Mortgage is placed on the Property for the purpose of securing funds to finance the construction of, or to secure permanent financing for, improvements on the [Real] Property; (2) the principal amount secured by the construction loan Mortgage does not exceed the "hard costs" of construction, loan fees, and construction-period interest, engineering fees, architect fees, accountant fees, attorney fees (but not attorney fees incurred before actually obtaining the construction loan), city inspection and permit fees, current installments of assessments on the Property during the construction period, and premiums for bonds required in connection with the construction or this Contract; (3) the principal amount secured by the permanent loan Mortgage does not exceed 80% of the fair market value of the [Real] Property, as improved by the buildings and other improvements and all construction and permanent loan funds will be used solely to pay the expenses specified above; (4) the loan secured by the Mortgage is from a bank, mortgage company, savings and loan association, or other institutional lender; (5) the subordination agreement, construction loan, and permanent loan documents are on commercially reasonable terms and in a form reasonably acceptable to Seller, consistent with the terms of this Contract; and (6) Purchaser is not in default in the performance of any obligation under this Contract and no condition exists or event occurs or fails to occur that, with or without notice and an opportunity to cure, could ripen into such a default. The Mortgage or subordination agreement will provide that the mortgagee must notify Seller of any default under the Mortgage and grant Seller a reasonable opportunity within which to cure the default following the notice, not in any event less than the period allowed Purchaser. For purposes of the Mortgage, a default will be considered "cured" as long as Seller causes the overdue payment to be made or commences correction of the defaulted obligation within a 30-day period after receipt of notice of default, and diligently pursues the action to completion. Seller will not be obligated to "cure" any event of default pertaining to the bankruptcy or insolvency of Purchaser or other events related to Purchaser's status that cannot be cured by Seller, and the mortgagee will not foreclose the Mortgage or seek to enforce its other remedies under it as long as Seller otherwise takes the steps specified above. The loan documents will specifically provide that Seller will not have any personal liability with respect to the Mortgage, and Seller's right or election to cure any default or other action will not constitute an assumption of such liability by Seller.

11.2 Obligation of Purchaser. Purchaser will make all payments when due and will timely perform all other obligations required of Purchaser by the terms of any mortgage or trust deed as to which Seller has subordinated Seller's interest in the Property. [The construction, if any, will be bonded and performed pursuant to a firm construction contract with responsible, licensed independent contractors (satisfactory to Seller), and Seller will be named as an obligee on the completion bond.]

Section 12. Deed / Bill of Sale

On payment of the total purchase price for the Property as provided in this Contract Purchaser's performance of all other terms, conditions, and provisions of this Contract, Seller will forthwith deliver to Purchaser a good and sufficient deed and bill of sale conveying the Property free and clear of all liens and encumbrances, and all liens or encumbrances suffered by or placed on the Property by Purchaser subsequent to the date of this Contract.

Section 13. Security Agreement

Purchaser hereby grants Seller a security interest in the Personal Property and all rents, proceeds (including insurance proceeds), profits, replacement income, accounts, and capital related thereto. This instrument constitutes a security agreement within the meaning of the Uniform Commercial Code with respect to any personal property included within the description of the Property and all proceeds (including, without limitation, insurance and condemnation proceeds) therefrom and all replacements, accessions, and products thereof or thereto. On Seller's request, Purchaser will execute any necessary financing statements and take whatever other action is requested by Seller to perfect and continue Seller's security interest in the Personal Property. Purchaser hereby authorizes Seller to file any financing statements with respect to the Personal Property, as Seller deems necessary, at Purchaser's expense. Without further authorization from Purchaser, Seller may at any time file copies of this Contract as financing statements. Purchaser will reimburse Seller for all expenses incurred in perfecting or continuing this security interest. On default under the terms of this Contract, Purchaser will, within three days of receipt of written demand from Seller, assemble the personal property and make it available to Seller.

Section 14. Default

14.1 Events of Default. Time is of the essence of this Contract. A default will occur under any of the following circumstances:

(1) Purchaser's failure to make any Mortgage (principle, interest and taxes) payment within 30 days after it is due.

(2) Any default under the Prior Lien attributable to Purchaser.

(3) Purchaser's failure to perform any other obligations contained in this Contract within 30 days after notice from Seller specifying the nature of the default or, if the default cannot be cured within 90 days, failure within such time to commence and pursue curative action with reasonable diligence.

(4) Purchaser's dissolution, termination of existence, insolvency on a balance-sheet basis, or business failure; Purchaser's commencement of a voluntary case under the federal bankruptcy laws or under other federal or state law relating to insolvency or debtor's relief; the entry of a decree or order for relief against Purchaser in an involuntary case under the federal bankruptcy laws or under any other applicable federal or state law relating to insolvency or debtor's relief; the appointment or the consent by Purchaser to the appointment of a receiver, trustee, or custodian of Purchaser or of any of Purchaser's property; Purchaser's assignment for the benefit of creditors or Purchaser's failure generally to pay its debts as they become due.

(5) Purchaser's making or suffering a fraudulent transfer or conveyance under applicable federal or state law; Purchaser's concealment of any of its property from creditors; Purchaser's making or suffering a preference within the meaning of the federal bankruptcy law; or the imposition of a lien through legal proceedings or distraint on any of the property of Purchaser.

(6) Purchaser's failure to perform any term, condition, or provision of or any default attributable to Purchaser under any existing encumbrance or any default by Purchaser under any contract as to which Seller has or may have subordinated Seller's interest in the Property pursuant to Section 11.

14.2 Remedies of Default. In the event of a default, Seller may take any one or more of the following steps:

(1) Seller may foreclose this Contract by suit in equity.

(2) Seller may specifically enforce the terms of this Contract by suit in equity.

(3) With respect to any part of the Property that constitutes personal property in which Seller has a security interest, Seller may exercise the rights and remedies of a secured party as provided by the Uniform Commercial Code.

(4) If Purchaser fails to make any payment within 15 days after it is due, Seller may elect to impose a late charge of \$150.00, in addition to and not in lieu of any and all other rights and remedies available to Seller.

(5) After complying with the notice requirements and affording Purchaser the right to cure the default contained in ORS 93.905--93.945, as the same may be amended or superseded from time to time, as long as the same is applicable, Seller may declare this Contract forfeited and retain the amount of the payments previously made under this Contract. On recordation of the affidavit required by Oregon law, this Contract will be extinguished and canceled, and Purchaser will have no further right, title, or interest in and to the real property or to any return or compensation for payments previously made under this Contract, as though this Contract and such payments had never been made.

(6) Seller will be entitled to the appointment of a receiver as a matter of right whether or not the apparent value of the Property exceeds the amount of the balance due under this Contract, and any receiver appointed may serve without bond. Employment by Seller will not disqualify a person from serving as a receiver. On taking possession of all or any part of the Property, the receiver may:

(a) Use, operate, manage, control, and conduct business on the Property and make [necessary] expenditures for all maintenance and improvements [that in its judgments are proper];

(b) Collect all rents, revenues, income, issues, and profits (the "Income") from the Property and apply those sums to the [necessary] expenses of use, operation, and management;

(c) At Seller's option, complete any construction in progress on the Property and, in that connection, pay all bills, borrow funds, employ contractors, and make any changes in plans and specifications as Seller deems appropriate.

If the revenues produced by the Property are insufficient to pay expenses, the receiver may borrow, from Seller or otherwise, [such sums as the receiver deems necessary / the amounts required] for the purposes stated in this paragraph, and repayment of those sums will be secured by this Contract. Amounts borrowed from or advanced by Seller will bear interest at the same rate as the balance of the purchase price under this Contract from the date of expenditure until repaid and must be paid by Purchaser on demand.

(7) Purchaser hereby assigns to Seller all the Income from the Property, whether now or hereafter due. Before default, Purchaser may operate and manage the Property and collect the Income from

the Property. In the event of default and at any time thereafter, Seller may revoke Purchaser's right to collect the Income from the Property and may, either itself or through a receiver, collect the same. To facilitate collection, Seller may notify any tenant or other user to make payments of rents or use fees directly to Seller. If the Income is collected by Seller, then Purchaser irrevocably designates Seller as Purchaser's attorney-in-fact with full power of substitution and coupled with an interest to endorse instruments received in payment thereof in the name of Purchaser and to negotiate the same and collect the proceeds. Payments by tenants or other users to Seller in response to Seller's demand will satisfy the obligation for which the payments are made, whether or not any proper grounds for the demand existed. Seller will apply the Income first to the Seller's reasonable expenses of renting or collection and the balance (if any) to the payment of sums due from Purchaser to Seller under this Contract.

14.3 Nonrecourse Obligation. In the event of the occurrence of any default in the payment of principal, interest, or both under this Contract, Purchaser will not be personally liable therefor and Seller's sole remedy for that default will be limited to foreclosure of the Property encumbered by this Contract or the exercise of any other rights set forth in this Contract or any other security given to secure this Contract, but will not include the right to proceed directly against Purchaser or the right to obtain a deficiency judgment after foreclosure for the collection of such sums. It is further understood and agreed, however, that nothing contained in this paragraph will in any manner or way release, affect, or impair (1) the existence of the indebtedness evidenced by this Contract and Exhibits referenced herein, (2) the enforceability of the liens and security interests created by, and the rights and remedies of Seller under this Contract and the other security documents, (3) the liability of Purchaser for the performance and observance of all covenants under this Contract and in the other security documents other than the covenants for the payment of principal and interest under this Contract, (4) the right of Seller to recover from the undersigned any insurance or condemnation proceeds paid or delivered to the undersigned (without imposing any obligation on Seller to pay or deliver any such sums to Purchaser) and not used by Purchaser for restoration or repair of the Property, (5) the right of Seller after the occurrence of an event of default to recover from Purchaser an amount necessary to repair any damage to the Property that is caused by the willful or wanton act or omission of Purchaser or Purchaser's agents, servants, employees, contractors, subcontractors, or invitees, or (6) the right of Seller to recover from Purchaser any sums expended by Seller in the performance of or in compliance with all covenants, agreements, and provisions of any leases or other agreements or obligations assigned to Purchaser that are so expended by reason of Purchaser's neglect or refusal to perform such covenants, agreements, or provisions or to prevent Seller from recovering any damages or losses incurred or suffered by Seller

and any rents or other revenues lost as a result of Purchaser's failure to perform such covenants, agreements, and provisions.

Section 15. Waiver

The failure of either party at any time to require performance of any provision of this Contract will not limit the party's right to enforce the provision except to the extent expressly set forth in a writing signed by that party, nor will any waiver of any breach of any provision constitute a waiver of any succeeding breach of that provision or a waiver of that provision itself.

Section 16. Successor Interests

This Contract is binding on and inures to the benefit of the parties, their successors, and assigns; Seller's consent to one transfer will not constitute consent to other transfers or waiver of this section.

Section 17. Prior Agreements

This document is the entire, final, and complete agreement of the parties pertaining to the sale and purchase of the Property, and supersedes and replaces all prior or existing written and oral agreements (including any earnest money agreement) between the parties or their representatives relating to the Property.

Section 18. Notice

Any notice under this Contract must be in writing and will be effective when actually delivered in person or 5 days after being] deposited in the U.S. mail, registered or certified, return receipt requested, postage prepaid and addressed to the party at the address stated in this Contract or such other address as either party may designate by written notice to the other.

Section 19. Applicable Law

This Contract shall be governed by, and construed in accordance with, the laws of the state of Oregon.

Section 20. Costs and Attorney Fees

20.1 No Suit or Action Filed. If either party to this Contract seeks legal counsel because of a default in the payment or performance of any of its terms, the defaulting party must pay, immediately on demand, the other party's reasonable attorney fees, collection costs, costs of either a litigation or a foreclosure report (whichever is appropriate), even though no suit or action is filed thereon, and any other fees or expenses incurred by the nondefaulting party.

20.2 Arbitration or Mediation; Trial and Appeal. If any arbitration, mediation, or other proceeding is brought in lieu of litigation, or if suit or action is instituted to enforce or interpret any of the terms of this Contract, or if suit or action is instituted in a bankruptcy court for a United States District Court to enforce or interpret any of the terms of this Contract, to seek relief from an automatic stay, to obtain adequate protection, or to otherwise assert Seller's interest in a bankruptcy proceeding, the party not prevailing must pay the prevailing party's costs and disbursements, the fees and expenses of expert witnesses in determining reasonable attorney fees under ORCP 68, the actual cost of a litigation or foreclosure report, and any sums that the court may determine to be reasonable for the prevailing party's attorney fees connected with the trial and any appeal and by petition for review thereof; in addition, the Court must award the prevailing party reasonable attorney's fees.

20.3 Definitions. For purposes of this Contract, the term *attorney fees* includes all charges of the prevailing party's lawyers and their staff (including without limitation legal assistants, paralegals, word processing, and other support personnel) and any postpetition fees in a bankruptcy court. For purposes of this Contract, the term *fees and expenses* includes but is not limited to long-distance telephone charges; expenses of facsimile transmission; expenses for postage (including costs of registered or certified mail and return receipts), express mail, or parcel delivery; mileage and all deposition charges, including but not limited to court reporters' charges, appearance fees, and all costs of transcription; costs incurred in searching records; and the cost of title reports or surveyor's reports.

Section 21. Number, Gender, and Captions

As used in this Contract, the singular includes the plural, and the plural the singular. The masculine and neuter each include the masculine, feminine, and neuter, as the context requires. All captions

used in this Contract are intended solely for convenience of reference and in no way limit any of the provisions of this Contract.

Section 22. Survival of Covenants

Any covenants the full performance of which is not required before the closing or final payment of the purchase price and delivery of the deed will survive the closing and the final payment of the purchase price and the delivery of the deed and be fully enforceable thereafter in accordance with their terms.

Section 23. Condition of Property

Purchaser accepts the land, buildings, improvements,] and all other aspects of the Property in their present condition, AS IS, WHERE IS, including latent defects, without any representations or warranties from Seller or any agent or representative of Seller, expressed or implied, except for such warranties that may arise by law under the Deed and except as otherwise specifically set forth in this Contract. Purchaser agrees that Purchaser has ascertained, from sources other than Seller or any agent or representative of Seller, the condition of the Property, its suitability for Purchaser's purposes, and the applicable zoning, building, housing, and other regulatory ordinances and laws affecting the Property. Purchaser accepts the Property with full awareness of these ordinances and laws as they may affect the present use or any intended future use of the Property. Except for such warranties that may arise by law under the Deed and except as otherwise specifically stated in this Contract, Seller has made no representations with respect to such condition or suitability of the Property or such laws or ordinances.

Section 24. Statutory Disclaimer

The following disclaimer is made pursuant to ORS 93.040(2):

THE PROPERTY DESCRIBED IN THIS INSTRUMENT MAY NOT BE WITHIN A FIRE PROTECTION DISTRICT PROTECTING STRUCTURES. THE PROPERTY IS SUBJECT TO LAND USE LAWS AND REGULATIONS THAT, IN FARM OR FOREST ZONES, MAY NOT AUTHORIZE CONSTRUCTION OR SITING OF A RESIDENCE AND THAT LIMIT LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930, IN ALL ZONES. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS

5 TO 11, CHAPTER 424, OREGON LAWS 2007. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO VERIFY THE EXISTENCE OF FIRE PROTECTION FOR STRUCTURES AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

The following disclaimer is made pursuant to ORS 93.040(1):

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES, AS DEFINED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

The following statutory notice is made pursuant to ORS 93.040(3):

THE PROPERTY DESCRIBED IN THIS INSTRUMENT IS SUBJECT TO SPECIAL ASSESSMENT UNDER ORS 358.505. ORS 358.515 REQUIRES NOTIFICATION TO THE STATE HISTORIC PRESERVATION OFFICER OF SALE OR TRANSFER OF THIS PROPERTY.

The parties agree to the terms contained herein.

Denton A. Honbeck
Denton A. Honbeck, Seller

Greg Warnock
Greg Warnock, Purchaser

Jane Honbeck
Jane Honbeck, Seller

Shelly Warnock
Shelly Warnock, Purchaser

ACKNOWLEDGMENTS

STATE OF OREGON)
) ss:
County of Polk)

This instrument was acknowledged before me on July 3, 2013, by Denton A. Honbeck and Jane A. Honbeck and Gregory L. Warnock and Shelly K Warnock.

/s/ Susan Pena
Notary Public
My commission expires: April 14, 2014



MEMORANDUM OF CONTRACT OF SALE

DATED: July 3, 2013.

BETWEEN: Denton A. Honbeck and Jane A. Honbeck

At 634 Cessna Avenue, Independence, OR 97351

AND: ("Purchaser") Gregory L. Warnock and Shelly K. Warnock

PO Box 8043, Salem, OR 97351

Pursuant to a Contract of Sale dated July 3, 2013 Seller sold to Purchaser Seller's interest in that certain property in Polk County, Oregon, more particularly described in the attached Exhibit A. The true and actual consideration for this conveyance is \$290,000.00.

BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON TRANSFERRING FEE TITLE SHOULD INQUIRE ABOUT THE PERSON'S RIGHTS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007. THIS INSTRUMENT DOES NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY THAT THE UNIT OF LAND BEING TRANSFERRED IS A LAWFULLY ESTABLISHED LOT OR PARCEL, AS DEFINED IN ORS 92.010 OR 215.010, TO VERIFY THE APPROVED USES OF THE LOT OR PARCEL, TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DESCRIBED IN ORS 30.930 AND TO INQUIRE ABOUT THE RIGHTS OF NEIGHBORING PROPERTY OWNERS, IF ANY, UNDER ORS 195.300, 195.301 AND 195.305 TO 195.336 AND SECTIONS 5 TO 11, CHAPTER 424, OREGON LAWS 2007.

Property Tax Account No. 199337 (Polk County, Oregon)

IN WITNESS WHEREOF, the parties have caused this memorandum to be executed as of the day and year first above written.

Denton A. Honbeck
Denton A. Honbeck, Seller

Greg Warnock
Greg Warnock, Purchaser

Jane Honbeck
Jane Honbeck, Seller

Shelly Warnock
Shelly Warnock, Purchaser

ACKNOWLEDGMENTS

STATE OF OREGON)
) ss:
County of Polk)

This instrument was acknowledged before me on July 3, 2013, by Denton A. Honbeck and Jane A. Honbeck and Gregory L. Warnock and Shelly K Warnock.



/s/ Susan Pena
Notary Public
My commission expires: April 14, 2014

EXHIBIT A

(Property Description)

LOT 2, BLOCK 1, INDEPENDENCE AIRPARK, IN THE CITY OF INDEPENDENCE,
COUNTY OF POLK, STATE OF OREGON. TOGETHER WITH A NON-EXCLUSIVE
EASMENT FOR MOVING AIRCRAFT ONTO SKYWAY TAXIWAY.

EXHIBIT B

(Title Report- see attached)

EXHIBIT C

(Amortization table-see attached)

Monbeck Warnock Contract of Sale

Exhibit C

Initials:
APL
JW
OH

Basic Loan Information	
Loan Amount	\$290,000.00
Interest Rate	5.000%
Loan Term (in months)	180
Monthly Payment	\$2,293.31
# of Pmts - 1st Year	12

Extra Payments				
Interval	Amount	Start in Month	Duration	End in Month
Monthly	\$1,000.00	1	Until End of Loan	

	Month #	Payment	Interest	Principal	Extra Pmt	Balance
7-3-13	1	3,293.31	1,208.33	2,084.98	1,000.00	287,915.02
8-5	2	3,293.31	1,199.65	2,093.66	1,000.00	285,821.36
9-5	3	3,293.31	1,190.92	2,102.39	1,000.00	283,718.97
10-5	4	3,293.31	1,182.16	2,111.15	1,000.00	281,607.82
11-5	5	3,293.31	1,173.37	2,119.94	1,000.00	279,487.88
12-5	6	3,293.31	1,164.53	2,128.78	1,000.00	277,359.10
1-5-14	7	3,293.31	1,155.66	2,137.65	1,000.00	275,221.45
2-5	8	3,293.31	1,146.76	2,146.55	1,000.00	273,074.90
3-5	9	3,293.31	1,137.81	2,155.50	1,000.00	270,919.40
4-5	10	3,293.31	1,128.83	2,164.48	1,000.00	268,754.92
5-5	11	3,293.31	1,119.81	2,173.50	1,000.00	266,581.42
6-5	12	3,293.31	1,110.76	2,182.55	1,000.00	264,398.87

Year 1 Totals	\$39,519.72	\$13,918.59	\$25,601.13	\$12,000.00
Cumulative Totals	\$39,519.72	\$13,918.59	\$25,601.13	\$12,000.00

	Month #	Payment	Interest	Principal	Extra Pmt	Balance
7-5	13	3,293.31	1,101.66	2,191.65	1,000.00	262,207.22
8-5	14	3,293.31	1,092.53	2,200.78	1,000.00	260,006.44
9-5	15	3,293.31	1,083.36	2,209.95	1,000.00	257,796.49
* POA 10-5	16	3,293.31	1,074.15	2,219.16	1,000.00	255,577.33
11-5	17	3,293.31	1,064.91	2,228.40	1,000.00	253,348.93
* \$2293.31 (12-5)	18	3,293.31	1,055.62	2,237.69	1,000.00	251,111.24
1-5-15	19	3,293.31	1,046.30	2,247.01	1,000.00	248,864.23
2-5	20	3,293.31	1,036.93	2,256.38	1,000.00	246,607.85
3-5	21	3,293.31	1,027.53	2,265.78	1,000.00	244,342.07
4-5	22	3,293.31	1,018.09	2,275.22	1,000.00	242,066.85
5-5	23	3,293.31	1,008.61	2,284.70	1,000.00	239,782.15

* LAST
Completed
Payment
* 100%
Paid

24	3,293.31	999.09	2,294.22	1,000.00	237,487.93
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Year 2 Totals	\$39,519.72	\$12,608.78	\$26,910.94	\$12,000.00	
Cumulative Totals	\$79,039.44	\$26,527.37	\$52,512.07	\$24,000.00	

2015	Month #	Payment	Interest	Principal	Extra Pmt	Balance
6-5	25	3,293.31	989.53	2,303.78	1,000.00	235,184.15
7-5	26	3,293.31	979.93	2,313.38	1,000.00	232,870.77
8-5	27	3,293.31	970.29	2,323.02	1,000.00	230,547.75
9-5	28	3,293.31	960.62	2,332.69	1,000.00	228,215.06
10-5	29	3,293.31	950.90	2,342.41	1,000.00	225,872.65
11-5	30	3,293.31	941.14	2,352.17	1,000.00	223,520.48
12-5	31	3,293.31	931.34	2,361.97	1,000.00	221,158.51
1-5-16	32	3,293.31	921.49	2,371.82	1,000.00	218,786.69
	33	3,293.31	911.61	2,381.70	1,000.00	216,404.99
	34	3,293.31	901.69	2,391.62	1,000.00	214,013.37
	35	3,293.31	891.72	2,401.59	1,000.00	211,611.78
	36	3,293.31	881.72	2,411.59	1,000.00	209,200.19

Year 3 Totals	\$39,519.72	\$11,231.98	\$28,287.74	\$12,000.00	
Cumulative Totals	\$118,559.16	\$37,759.35	\$80,799.81	\$36,000.00	

Month #	Payment	Interest	Principal	Extra Pmt	Balance
37	3,293.31	871.67	2,421.64	1,000.00	206,778.55
38	3,293.31	861.58	2,431.73	1,000.00	204,346.82
39	3,293.31	851.45	2,441.86	1,000.00	201,904.96
40	3,293.31	841.27	2,452.04	1,000.00	199,452.92
41	3,293.31	831.05	2,462.26	1,000.00	196,990.66
42	3,293.31	820.79	2,472.52	1,000.00	194,518.14
43	3,293.31	810.49	2,482.82	1,000.00	192,035.32
44	3,293.31	800.15	2,493.16	1,000.00	189,542.16
45	3,293.31	789.76	2,503.55	1,000.00	187,038.61
46	3,293.31	779.33	2,513.98	1,000.00	184,524.63
47	3,293.31	768.85	2,524.46	1,000.00	182,000.17
48	3,293.31	758.33	2,534.98	1,000.00	179,465.19

Year 4 Totals	\$39,519.72	\$9,784.72	\$29,735.00	\$12,000.00	
Cumulative Totals	\$158,078.88	\$47,544.07	\$110,534.81	\$48,000.00	

Month #	Payment	Interest	Principal	Extra Pmt	Balance
49	3,293.31	747.77	2,545.54	1,000.00	176,919.65

50	3,293.31	737.17	2,556.14	1,000.00	174,363.51
51	3,293.31	726.51	2,566.80	1,000.00	171,796.71
52	3,293.31	715.82	2,577.49	1,000.00	169,219.22
53	3,293.31	705.08	2,588.23	1,000.00	166,630.99
54	3,293.31	694.30	2,599.01	1,000.00	164,031.98
55	3,293.31	683.47	2,609.84	1,000.00	161,422.14
56	3,293.31	672.59	2,620.72	1,000.00	158,801.42
57	3,293.31	661.67	2,631.64	1,000.00	156,169.78
58	3,293.31	650.71	2,642.60	1,000.00	153,527.18
59	3,293.31	639.70	2,653.61	1,000.00	150,873.57
60	3,293.31	628.64	2,664.67	1,000.00	148,208.90

Year 5 Totals	\$39,519.72	\$8,263.43	\$31,256.29	\$12,000.00	
Cumulative Totals	\$197,598.60	\$55,807.50	\$141,791.10	\$60,000.00	

Month #	Payment	Interest	Principal	Extra Pmt	Balance
61	3,293.31	617.54	2,675.77	1,000.00	145,533.13
62	3,293.31	606.39	2,686.92	1,000.00	142,846.21
63	3,293.31	595.19	2,698.12	1,000.00	140,148.09
64	3,293.31	583.95	2,709.36	1,000.00	137,438.73
65	3,293.31	572.66	2,720.65	1,000.00	134,718.08
66	3,293.31	561.33	2,731.98	1,000.00	131,986.10
67	3,293.31	549.94	2,743.37	1,000.00	129,242.73
68	3,293.31	538.51	2,754.80	1,000.00	126,487.93
69	3,293.31	527.03	2,766.28	1,000.00	123,721.65
70	3,293.31	515.51	2,777.80	1,000.00	120,943.85
71	3,293.31	503.93	2,789.38	1,000.00	118,154.47
72	3,293.31	492.31	2,801.00	1,000.00	115,353.47

Year 6 Totals	\$39,519.72	\$6,664.29	\$32,855.43	\$12,000.00	
Cumulative Totals	\$237,118.32	\$62,471.79	\$174,646.53	\$72,000.00	

Month #	Payment	Interest	Principal	Extra Pmt	Balance
73	3,293.31	480.64	2,812.67	1,000.00	112,540.80
74	3,293.31	468.92	2,824.39	1,000.00	109,716.41
75	3,293.31	457.15	2,836.16	1,000.00	106,880.25
76	3,293.31	445.33	2,847.98	1,000.00	104,032.27
77	3,293.31	433.47	2,859.84	1,000.00	101,172.43
78	3,293.31	421.55	2,871.76	1,000.00	98,300.67
79	3,293.31	409.59	2,883.72	1,000.00	95,416.95

Exhibit 1

Page 25 of 27

80	3,293.31	397.57	2,895.74	1,000.00	92,521.21
81	3,293.31	385.51	2,907.80	1,000.00	89,613.41
82	3,293.31	373.39	2,919.92	1,000.00	86,693.49
83	3,293.31	361.22	2,932.09	1,000.00	83,761.40
84	3,293.31	349.01	2,944.30	1,000.00	80,817.10

Year 7 Totals	\$39,519.72	\$4,983.35	\$34,536.37	\$12,000.00	
Cumulative Totals	\$276,638.04	\$67,455.14	\$209,182.90	\$84,000.00	

Month #	Payment	Interest	Principal	Extra Pmt	Balance
85	3,293.31	336.74	2,956.57	1,000.00	77,860.53
86	3,293.31	324.42	2,968.89	1,000.00	74,891.64
87	3,293.31	312.05	2,981.26	1,000.00	71,910.38
88	3,293.31	299.63	2,993.68	1,000.00	68,916.70
89	3,293.31	287.15	3,006.16	1,000.00	65,910.54
90	3,293.31	274.63	3,018.68	1,000.00	62,891.86
91	3,293.31	262.05	3,031.26	1,000.00	59,860.60
92	3,293.31	249.42	3,043.89	1,000.00	56,816.71
93	3,293.31	236.74	3,056.57	1,000.00	53,760.14
94	3,293.31	224.00	3,069.31	1,000.00	50,690.83
95	3,293.31	211.21	3,082.10	1,000.00	47,608.73
96	3,293.31	198.37	3,094.94	1,000.00	44,513.79

Year 8 Totals	\$39,519.72	\$3,216.41	\$36,303.31	\$12,000.00	
Cumulative Totals	\$316,157.76	\$70,671.55	\$245,486.21	\$96,000.00	

Month #	Payment	Interest	Principal	Extra Pmt	Balance
97	3,293.31	185.47	3,107.84	1,000.00	41,405.95
98	3,293.31	172.52	3,120.79	1,000.00	38,285.16
99	3,293.31	159.52	3,133.79	1,000.00	35,151.37
100	3,293.31	146.46	3,146.85	1,000.00	32,004.52
101	3,293.31	133.35	3,159.96	1,000.00	28,844.56
102	3,293.31	120.19	3,173.12	1,000.00	25,671.44
103	3,293.31	106.96	3,186.35	1,000.00	22,485.09
104	3,293.31	93.69	3,199.62	1,000.00	19,285.47
105	3,293.31	80.36	3,212.95	1,000.00	16,072.52
106	3,293.31	66.97	3,226.34	1,000.00	12,846.18
107	3,293.31	53.53	3,239.78	1,000.00	9,606.40
108	3,293.31	40.03	3,253.28	1,000.00	6,353.12

Year 9 Totals	\$39,519.72	\$1,359.05	\$38,160.67	\$12,000.00	
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Exhibit 1

Page 26 of 27

Cumulative Totals	\$355,677.48	\$72,030.60	\$283,646.88	\$108,000.00
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Month #	Payment	Interest	Principal	Extra Pmt	Balance
109	3,293.31	26.47	3,266.84	1,000.00	3,086.28
110	3,099.14	12.86	3,086.28	805.83	0.00

Year 10 Totals	\$6,392.45	\$39.33	\$6,353.12	\$1,805.83	
Cumulative Totals	\$362,069.93	\$72,069.93	\$290,000.00	\$109,805.83	

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

PLAINTIFFS' MOTION FOR
SUMMARY JUDGMENT
(Oral Argument Requested)

UTCR 5.050

Plaintiffs estimate that 45 minutes will be required for oral argument. Official court reporting services are requested.

MOTION

Plaintiffs move this Court for an order granting summary judgment in favor of Plaintiffs on their suit for strict foreclosure. There is no genuine issue of material fact, and Plaintiffs are entitled to judgment as a matter of law. This motion is based upon ORCP 47, the records and files herein and the affidavit of plaintiff Denton Honbeck.

Plaintiffs also request reimbursement of their costs and attorney fees pursuant to the land sales contract.

POINTS AND AUTHORITIES

The Court shall grant summary judgment if there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. ORCP 47; Seeborg v. General Motors Corp., 284 Or 695 (1978). The construction of a contract is a matter of law to be determined by the Court. Pioneer Resources, LLC v. D. R. Johnson Lumber Co., 187 Or App 341, 361 (2003). An unambiguous contract must be enforced according to its

1 terms. Id. Summary judgment is properly granted in a strict foreclosure suit when there
2 is no genuine issue of material fact that the vendee has failed to comply with the land sales
3 contract. Cox v. Fireside Realty, Inc., 280 Or 393 (1977).

4 FACTS

5 The facts are set out in Plaintiff Denton Honbeck's affidavit to which the landsales
6 contract is attached. The landsales contract requires monthly payments (paragraph 1.2.2).
7 Defendants made no monthly payments for February through June. Defendants admit this
8 fact in their answer (page 2, line 6).

9 The contract provides that time is of the essence (paragraph 14.1). Paragraph 14.1(1)
10 further provides that a default occurs upon Purchaser's failure to make the monthly
11 payment within 30 days after it is due. Contrary to Defendants' argument in their answer,
12 paragraph 14.1(3), by its terms, does not apply to the monthly payments of principle and
13 interest. That section only applies to "any other obligations."

14 The contract allows strict foreclosure. Paragraph 14.2 lists the various remedies
15 available upon default and states that Seller "may take any one or more of the following
16 steps." Paragraph 14.2(1) gives the seller the option to "foreclose this Contract by suit in
17 equity."

18 Contrary to the arguments in Defendants' answer, Plaintiffs are not required to use
19 the statutory forfeiture option which is a nonjudicial process with its own procedure and
20 timelines.

21 CONCLUSION

22 Plaintiffs are entitled to a judgment of foreclosure as a matter of law because
23 Defendants stopped paying the monthly payments. The Court should authorize a limited
24 judgment requiring Defendants to pay the amounts set forth in Plaintiffs' complaint in 30
25 days or be forever foreclosed.
26

1
2 DATED: 8-21, 2015
3

4 SHETTERLY, IRICK & OZIAS

5
6 By: 

TERESA OZIAS - OSB No. 901871
teresa@siso-law.com
Attorneys for Plaintiff
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9 H:\T\realproperty\Honbeck\MotionSummaryJudg.wpd
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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Plaintiffs' Motion for Summary Judgment and Affidavit of Plaintiff Denton Honbeck on the date indicated below by:

- ☒ Mail with postage prepaid, deposited in the US mail at Dallas, Oregon
☐ office delivery
☐ hand delivery
☐ facsimile transmission
☐ email
☐ electronic filing notification.

I further certify that said copy delivered as indicated above was addressed to said attorney(s) or parties at the address(es) listed below:

DATED: August 25, 2015

SHETTERLY, IRICK & OZIAS

By: 

Teresa Ozias - OSB #901871
Teresa@siso-law.com
Attorneys for Plaintiffs

H:\T\realproperty\Honbeck\certofservice.wpd

Verified Correct Copy of Original 9/30/2015.

1 Gregory L. Warnock
2 Shelly K. Warnock
3 634 Cessna St.
4 Independence, OR 97351

FILED
POLK COUNTY OREGON
15 SEP 30 PM 2:11
TRIAL COURT ADMINISTRATOR
ENTERED BY

5 IN THE CIRCUIT COURT OF THE STATE OF OREGON
6 FOR THE COUNTY OF POLK
7 CIVIL DEPARTMENT

8
9 DENTON A. HONBECK

Case No.: 15CV17952

10 JANE A. HONBECK

11 Plaintiffs,
12 VS.

DEFENDANT'S COMMENTS AND REFERENCES
REQUESTED BY THE COURT

13 GREGORY L. WARNOCK

14 SHELLEY K. WARNOCK

15 Defendants
16

17
18 **References and Comments**

19
20 Defendants emphatically objected to Plaintiff's motion for a strict foreclosure (with 30 days to
21 remedy the default), during the September 25, 2015 Summary Judgment hearing, because a strict foreclosure with
22 30 days to remedy would be severely inequitable to the defendants. A Strict Foreclosure is generally seen as the
23 harshest type of foreclosure available to a vendor, because the vendee can easily be take advantage of in a land sales
24 contract. Many States outlaw the use of a strict foreclosure, though Oregon allows for it, but makes no
25 recommendation for the amount of time a vendee has to remedy the default amount, and requires both the vendor
26 and vendee's equity in the property to be considered. Equity, both for the plaintiff and defendant should be
considered when the court decides on a strict foreclosure motion.

DEFENDANT'S COMMENTS AND REFERENCES REQUESTED BY THE COURT - I

1 The rules for establishing a strict foreclosure were decided in referenced in Marquardt v. Fisher,
2 135 Or 256, 258, 295 P 499, 77 ALR 265:

3 " [I]f the suit is for strict foreclosure and the case is such that the granting of the remedy of strict
4 foreclosure would not be inequitable then the plaintiffs would be entitled to a decree requiring the
5 defendants to pay the money due under the contract within such reasonable time as the court should direct,
6 or be foreclosed of their equities in the property. If, however, the granting of the equitable relief of strict
7 foreclosure would, for any reason, be inequitable, then it would be the duty of the court to decree that if the
8 purchase money be not paid within the time set by the court then the property should be sold and the
9 vendor's interest be satisfied from the proceeds."

10 The plaintiff has argued that there are no other remedies available to them in this case, which isn't
11 true, since there are many other remedies listed in the underlying land sales contract. But, if a strict foreclosure
12 remedy is decided by this court of equity, a greater amount of time for the defendant's to remedy the default should
13 be considered. (Higinbotham v. Frock, 48 Or 129, 132, 83 P 536)

14 "An application for a strict foreclosure is always addressed to the sound discretion of the court, and when
15 enforced at all will not be done without giving the defendant a reasonable time to comply with his
16 contract."

17 The defendant's argue that the large amount of equity they hold in the property should be a factor
18 in the court's decision to either deny the plaintiff's motion for a strict foreclosure (with 30 days to remedy), or
19 decide on a more equitable amount of time to remedy the default.

20 The value of the property after the defendant's renovations are completed range between
21 \$330,000.00-380,000.00, while the balance due on the contract is only approximately \$251,000.00. The defendants
22 would agree to a third party evaluation, by a licensed appraiser, if the court deems that necessary.

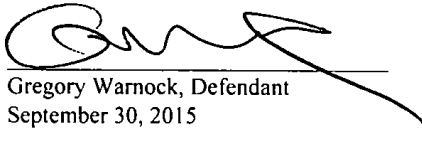
23 When the plaintiff's entered in the contract with the defendant's, the amount of time allowed for
24 the land sales contract, before its completion on December 31, 2015, was primarily determined by the amount of
25 time it would take to make the improvements necessary to refinance the property with acceptable terms. The
26 improvements are not yet completed, but can be completed before the contract ends. All materials have been
purchased. Defendants estimate that approximately 60 days are required to complete the renovations. A short sale,
to recover the defendant's equity is also an option, but that will also require 60-90 days.

The plaintiff's may argue that there has been enough time between the defendant's technical
default and the date of their motion for the defendant to remedy the default, but the defendant's argue (1) that if

1 time was of the essence, they would have filed for a strict foreclosure earlier in 2015, and since they didn't file for
2 such relief, they essentially waived their right to use that contractual clause; and, (2) Defendant's argue that the
3 plaintiff's knew of the renovations and only decided to file a suit of equity after seeing the improvements and
4 realizing that they had an opportunity to take advantage of the value of the improvements, and the overall housing
5 market by filing for a strict foreclosure, before the defendants had the opportunity to refinance or sell the property to
6 retain their equity.

7
8 Additional references to these arguments are found in the following Oregon Supreme Court case
9 (BLONDELL ET UX v. BEAM ET UX), and that court's references in the case, as copied from Justia US Law
10 references (<http://law.justia.com/cases/oregon/supreme-court/1966/243-or-293-4.html>), which are copied in full
11 below.

12
13
14 Respectfully submitted,

15 
16 Gregory Warnock, Defendant
17 September 30, 2015
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1 BLONDELL ET UX v. BEAM ET UX

2 243 Or. 293 (1966)

3 413 P.2d 397

4 Supreme Court of Oregon.

5 Argued February 2, 1966.

6 Reversed and remanded April 20, 1966.

7 *294 Donald S. Kelley, Roseburg, argued the cause for appellants. With him on the briefs were
8 Kelley, Garrison & Lasswell, Roseburg.

9 Warren A. Woodruff, Roseburg, argued the cause for respondents. With him on the brief was
10 George Luoma, Roseburg.

11 Before McALLISTER, Chief Justice, and PERRY, GOODWIN, DENECKE and SCHWAB,
12 Justices.

13 REVERSED AND REMANDED.

14 SCHWAB, J. (Pro Tempore).

15 Plaintiffs brought suit to enforce the strict foreclosure clause of a land sale contract. They appeal
16 from a decree denying foreclosure in any form and reinstating the contract upon payment by the vendees of past due
17 taxes. The issue is whether a court of equity has the power to deny relief to a vendor in the face of proof of a
18 material default not waived by vendor; or whether the court's power to do equity is restricted to the exercise of
19 discretion in determining what form of relief shall be granted. We conclude that the rule in Oregon has been and
20 should continue to be the latter.

21 *295 In December of 1961 plaintiffs (vendors) entered into a contract with the defendants
22 (vendees) for the sale of certain real property. The purchase price was \$25,000, payable \$4,000 down and the
23 balance in annual installments with interest on the unpaid balance at the rate of 4% per annum. Time was made the
24 essence of the contract which provided that the vendees were to pay all taxes before they became past due. The

25 DEFENDANT'S COMMENTS AND REFERENCES REQUESTED BY THE COURT - 4
26

1 contract included a provision giving the seller the right to strict foreclosure by suit in equity in the event of a default
2 by purchasers.

3 When sellers discovered that real property taxes for the years 1961-64 in the amount of \$927.38
4 were past due and unpaid they brought this suit in equity seeking strict foreclosure.

5 Before suit was brought the vendees by timely payments of principal and interest had reduced the
6 balance due to \$19,446.66. Prior to the commencement of the suit Douglas county took a portion of the land in order
7 to widen a county road, paying \$1,650 for the portion taken to the vendors who applied it against the principal. Thus
8 when the complaint was filed the balance owing on the contract was \$17,796.66.

9 After suit was filed the defendants tendered into court the amount of the past due taxes and filed
10 an answer setting forth two affirmative defenses: (1) that the time essence clause was waived by the vendees'
11 acceptance of annual payments after the default of the vendees; (2) that the proceeds from the eminent domain
12 award should have been paid directly to the vendees rather than applied against the principal.

13 1, 2. The trial court properly found the affirmative defenses to be without merit. As to the first
14 defense, there was no evidence of waiver by the vendors. As to *296 the second defense, the vendees waived any
15 claim to the \$1,650 Douglas county paid for the portion of land it took when they computed their 1963 and 1964
16 annual payments on the basis of the principal balance being reduced by the amount of the eminent domain award.

17 After making these findings of fact, the trial court decree provided:

18 "1. That the plaintiffs' complaint be dismissed and that the clerk of the above entitled court shall
19 pay forthwith the sums tendered by the defendants for taxes to the tax collector of Douglas County, Oregon and
20 shall pay the sums tendered by the defendants to the plaintiffs on the amounts due under said contract. "2. That the
21 plaintiffs shall have judgment against the defendants for plaintiffs' attorney's fees in the sum of \$200.00 plus costs
22 incurred in the bringing of said foreclosure suit excepting that no trial fee shall be allowed. "3. That said contract
23 shall be reinstated and the parties from hence forward required to carry out their respective obligations under said
24 contract."

25 3, 4. The transcript discloses that the trial judge, in reaching his decision, relied on Gulick v.
26 Copeland, 186 Or 640, 648-649, 207 P2d 1042, most recently reaffirmed by this court in Leighton v. Hawkins, 236

1 Or 638, 389 P2d 460, where this court approved the language in Harrington v. Birdsall, 38 Neb 176, 186-87, 56 NW
2 961 (1893):

3 "* * * The remedy by strict foreclosure of land contracts cannot be resorted to in all cases. The
4 remedy being a harsh one, courts of equity will decree a strict foreclosure only under peculiar and special
5 circumstances. Applications of that character are addressed to the sound legal discretion of the court, and they will
6 be granted in cases *297 where it would be inequitable to refuse them. If the vendee or purchaser has not been guilty
7 of gross laches, nor unreasonably negligent in performing the contract, a strict foreclosure should be refused on the
8 ground that it would be unjust, even though the vendee may have been slightly in default in making of a payment.
9 So, for the same reason, a strict foreclosure will be denied where the premises have greatly increased in value since
10 the sale, or where the amount of unpaid purchase money is much less than the value of the property. On the other
11 hand, if the vendee, without sufficient excuse, fails to make his payments according to the stipulations of his
12 contract, and for an unreasonable time remains in default, the vendor may have a strict foreclosure of the contract for
13 the sale and purchase of the land, unless some principle of equity would be thereby violated."

14 The Gulick and Leighton cases do not hold that if a strict foreclosure is inequitable the court may
15 refuse to grant any relief. It has long been the rule in Oregon that,

16 "* * * [A] vendor under such a [land sale] contract has a right * * * to go into a court of equity
17 upon the default of his vendee, * * * and in such suit the court may either decree a strict foreclosure or a sale of the
18 land, as the equities of the case may suggest." Security Savings Co. v. Mackenzie, 33 Or 209, 214, 52 P 1046.

19 In Temple Enterprises v. Combs, 164 Or 133, 158, 100 P2d 613, 128 ALR 856, this court, in
20 decreeing specific performance, said:

21 "* * * [I]t must be remembered that the discretion of a court of equity in cases of this character is
22 judicial in its nature and the relief is not 'of grace'; that, within the domain of equity, judicial remedies are not in any
23 true sense discretionary but are governed by the established principles *298 and rules which constitute the body of
24 equity jurisprudence."

25 The holding of the Temple Enterprises case is applicable here, for a suit to strictly foreclose a
26 contract in accordance with its terms is an affirmation of the contract which the vendor is seeking to enforce.

1 Atkochunas v. Gustafson, 156 Or 126, 66 P2d 1192. Where, as in the instant case, the contract provides for strict
2 foreclosure in the event of a default by the vendees, the contract contains a time-essence clause, the default is
3 material and has not been waived, the plaintiff is entitled to foreclosure in some form as a matter of right. The limit
4 of discretion of a court of equity in such a case is in the determination of the form foreclosure shall take, i.e., strict
5 foreclosure or foreclosure and judicial sale.

6 5. Insofar as it can be construed to hold that strict foreclosure is not often allowed, Harrington v.
7 Birdsall, 38 Neb 176, supra, is misleading. In Oregon, a decree of strict foreclosure is not a decree which
8 immediately, finally and completely cuts off the vendee's equitable interest in the property. In Higinbotham v.
9 Frock, 48 Or 129, 132, 83 P 536, we said:

10 " * * * An application for a strict foreclosure is always addressed to the sound discretion of the
11 court, and when enforced at all will not be done without giving the defendant a reasonable time to comply with his
12 contract."

13 Miles v. Hemenway, 59 Or 318, 326, 111 P 696, 117 P 273, defines a decree of strict foreclosure
14 as being

15 " * * * in the nature of a conditional cancellation of the contract to convey * * * consisting of an
16 alternate order, providing a definite time for the payment of the debt found to be due, and directing that upon a
17 failure to discharge the *299 obligation, within the time limited, the purchaser's equitable estate in the premises shall
18 be forever barred."

19 A number of Oregon decisions have characterized the "alternate order" as a decree of foreclosure
20 with time "within which to redeem." Morrison v. Kandler, 215 Or 489, 334 P2d 459; Hodges v. Servine, 211 Or
21 428, 316 P2d 312.

22 The fact that the granting of strict foreclosure is the rule rather than the exception is well
23 illustrated in the following quotation from Atkochunas v. Gustafson, 156 Or 126 at 130, 66 P2d 1192:

24 "It is well settled in this state that a vendor is entitled to the relief of strict foreclosure where the
25 vendee fails to comply with the terms of his contract in the payment of the purchase price. It was so held in the
26 following cases: Security Savings Co. v. Mackenzie, 33 Or. 209 (52 P. 1046); Sievers v. Brown, 34 Or. 454 (56 P.

1 171, 45 L.R.A. 642); Wollenberg v. Rose, 41 Or. 314 (68 P. 804); Flanagan Estate v. Great Cent. Land Co., 45 Or.
2 335 (77 P 485); Higinbotham v. Frock, 48 Or. 129 (83 P. 536, 120 Am. St. Rep. 796); Miles v. Hemenway, 59 Or.
3 318 (111 P. 696, 117 P. 273); Lyons v. Chaffee, 79 Or. 485 (154 P. 688); Cornely v. Campbell, 95 Or. 345 (186 P.
4 563, 187 P. 1103); Sheehan v. McKinstry, 105 Or. 473 (210 P. 167, 34 A.L.R. 1315); Anderson v. Hurlbert, 109 Or.
5 284 (219 P. 1092); Anderson v. Morse, 110 Or. 39 (222 P. 1083); Turnbow v. Keller, 142 Or. 200 (12 P.(2d) 558, 19
6 P.(2d) 1089)."

7 In their brief plaintiffs catalogue 36 Oregon cases in which vendors sought strict foreclosure. In
8 three the decrees provided for foreclosure and sale. In the remaining 33 strict foreclosure was allowed with
9 redemption times ranging from a minimum of fourteen *300 days to a maximum of one year. The rule governing
10 strict foreclosure is well stated in Marquardt v. Fisher, 135 Or 256, 258, 295 P 499, 77 ALR 265:

11 " * * * [I]f the suit is for strict foreclosure and the case is such that the granting of the remedy of
12 strict foreclosure would not be inequitable then the plaintiffs would be entitled to a decree requiring the defendants
13 to pay the money due under the contract within such reasonable time as the court should direct, or be foreclosed of
14 their equities in the property. If, however, the granting of the equitable relief of strict foreclosure would, for any
15 reason, be inequitable, then it would be the duty of the court to decree that if the purchase money be not paid within
16 the time set by the court then the property should be sold and the vendor's interest be satisfied from the proceeds * *
17 *."

18 6. There is nothing in the record from which we can determine whether the decree should grant
19 strict foreclosure or foreclosure and sale; or, if strict foreclosure is granted, what would be a reasonable time in
20 which to redeem.
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Verified Correct Copy of Original 9/30/2015.

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Certificate of Service

I certify that on this date, September 30, 2015, I served the foregoing Comments and References upon the Plaintiff's Attorneys at:

Shetterly, Irick, Ozias
189 Academy Street
Dallas, OR 97338


Gregory Warrock, Defendant

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

PLAINTIFFS' REPLY TO
DEFENDANTS' COMMENTS
AND REFERENCES

I. Defendants are entitled to judgment as a matter of law.

The court's first task is to decide whether Plaintiffs are entitled to judgment of foreclosure as a matter of law. Defendants do not deny that they have failed to make any payment since January of 2015. Based on Defendants' default and the terms of the contract, Plaintiffs are entitled to a judgment of strict foreclosure as a matter of law.

The authorities cited by Defendants do not persuade otherwise. As quoted in Defendants' memorandum:

"It is well settled in this state that a vendor is entitled to the relief of strict foreclosure where the vendee fails to comply with the terms of his contract in the payment of the purchase price." *Blondell v. Beam*, 243 Or 293, 299 (1966), *quoting*, *Atkochunas v. Gustafson*, 156 Or 126, 130 (1937) (Emphasis added).

The issue in *Blondell* was whether the trial court erred in denying foreclosure. There, the default was a failure to pay the taxes. Defendants had paid 10% down, had paid off half the amount owing on the contract, were current on their payments and had tendered the amount of the unpaid taxes into court. Nevertheless, the Court reversed the trial court, holding that the Plaintiff was entitled to foreclosure pursuant to the terms of the contract.

1 II. The land sales contract allows the vendor the option of strict foreclosure.

2 Defendants claim that Plaintiffs argue that they have no other remedy. That is not
3 correct. Plaintiffs have the right to elect their remedy pursuant to the terms of the contract.
4 (Paragraph 14.2). Defendants freely entered into the contract and are bound by its terms.
5 Defendants even drafted the land sales contract, and the terms thereof should be construed
6 against them. *Hoffman Construction Co. v. Fred S. James & Co.*, 313 Or 464, 470 (1992).

7 III. Thirty days is a reasonable amount of time.

8 Defendants' primary argument is that they should be given more time to pay up or
9 be foreclosed. After an interlocutory judgment of strict foreclosure, the vendee must be
10 given a reasonable time to pay the accelerated balance. *Blondell v. Beam*, 243 Or 293, 298
11 (1966). Plaintiffs have asked the court to give Defendants 30 days.

12 In Swaggert v. McLean, 38 Or App 207 (1979), the defendants argued that 30 days
13 was not sufficient time to come with \$350,000, particularly when they had already paid
14 \$70,000. The court of appeals held that 30 days was appropriate given that a year had
15 passed from the original default to the court's decree and 10 months had passed since the
16 contract had been accelerated. *Id.* at 211. The court noted that the defendant could have
17 paid off the contract at any time during that period and did not do so. *Id.*

18 In this case, Defendants have not made a full payment since November of 2014. (See
19 Affidavit of Plaintiff Denton Honbeck). They have not made any payment since January
20 of 2015. *Id.* As in Swaggert, Defendants have had all of this time to sell the property or to
21 otherwise figure out how to pay off the contract. In equity, a party should not be allowed
22 to sit on their hands and then ask for more time.

23 Furthermore, Defendants' default is in no way "technical," as they claim. The
24 monthly payments are the essence of the contract. They have failed to make any payments
25 since January 2015, while they continue to live in the house for free.

1 Defendants' unsubstantiated and fanciful claim that they have substantial equity
2 "after the defendants' renovations are completed" does not change the equities. If it were
3 true, then it would only give Defendants more incentive to act during the last 11 months
4 to protect their equity.


5 CONCLUSION

6 This court should grant summary judgment and enter a limited judgment giving
7 Defendants 30 days to pay up or be foreclosed.

8
9 DATED: October 5, 2015

10 SHETTERLY, IRICK & OZIAS

11
12
13 By:


14 Teresa Ozias - OSB #901871
15 Teresa@siso-law.com
16 Attorneys for Plaintiffs

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF POLK

6 DENTON A. HONBECK, and
7 JANE A. HONBECK

8 Plaintiffs,

9 v.

10 GREGORY L. WARNOCK, and
11 SHELLY K. WARNOCK,

12 Defendants.

CASE NO. 15CV17952

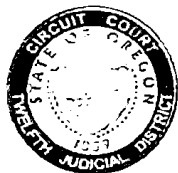
MAILING CERTIFICATE

13 I, Teresa Ozias, do hereby certify that I am one of the attorneys for the within-named
14 Plaintiffs; that on the 5th day of October, 2015, I deposited in the Post Office of the City of
15 Dallas, Oregon, a copy of the within Plaintiff's Reply to Defendant's Comments and
16 References, directed to Gregory & Shelly Warnock, the within-named Defendants, at PO
17 Box 8043, Salem, OR 97303, that being their Post Office address, and prepaid the postage
18 thereon.

19 Dated at Dallas, Oregon, this 5th day of October, 2015.

20
21 
22 _____
23 Teresa Ozias - OSB No. 901871

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FILED
11/2/2015
POLK COUNTY OREGON
105 PM
COURT ADMINISTRATOR

**THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE TWELFTH JUDICIAL DISTRICT**

Monte S Campbell
Presiding Judge

Polk County Courthouse, Room 301
850 Main Street, Dallas, OR 97338-3178

PHONE - (503) 623-9245
FAX - (503) 831-1767

Monday, November 02, 2015

TERESA OZIAS
Teresa@siso-law.com

GREGORY AND SHELLY WARNOCK
PO Box 8043
Salem, OR 97303

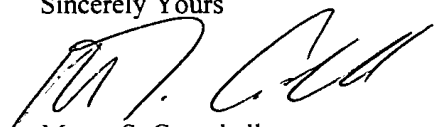
Re: 15PCV17952 DENTON A HONBECK AND JANE A HONBECK
v
GREGORY L WARNOCK AND SHELLY K WARNOCK

Dear Parties,

I have had the chance to review your motions and read the cases provided. Plaintiff is seeking a summary judgment for strict foreclosure. This is an equitable remedy. Defendants claim they have too much equity in the property for the court to allow strict foreclosure on summary judgement. Before the court is the affidavit of Denton Honbeck and the pleadings of the parties. Mr. Honbeck's affidavit states the purchase price of the property was \$290,000 and \$255,000 is still owing. The plaintiffs have not given or attempted to prove the actual value of the disputed property. The Warnock's pleadings state the value of the property is between \$330,000-\$380,000. This value is not in a sworn statement. It is obvious to the court that the value of the property is in dispute. The burden is upon the plaintiff to prove they are entitled to strict foreclosure and they have failed to meet their burden.

The summary judgment is denied. Ms. Ozias to prepare the order.

Sincerely Yours


Monte S. Campbell
Presiding Judge
Polk County Circuit Courts

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

ORDER DENYING
SUMMARY JUDGMENT

This matter came before the court upon Plaintiffs' motion for summary judgment. A hearing was held on September 25, 2015. The court issued a letter opinion dated November 2, 2015.

It is, therefore, ORDERED, that Plaintiffs' Motion for Summary Judgment is denied.

DATED:

Signed: 11/24/2015 10:26 AM



Circuit Court Judge Monte S. Campbell

SUBMITTED BY:
TERESA OZIAS - OSB No. 901871
teresa@siso-law.com
SHETTERLY, IRICK & OZIAS
Attorneys for Plaintiff
P.O. Box 105
Dallas, Oregon 97338
Telephone: 503-623-6695
Fax: 503-623-6695

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF POLK

6 DENTON A. HONBECK, and
7 JANE A. HONBECK

8 Plaintiffs,

9 v.

10 GREGORY L. WARNOCK, and
11 SHELLY K. WARNOCK,

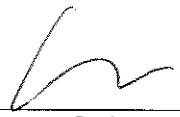
12 Defendants.

CASE NO. 15CV17952

CERTIFICATE OF
COMPLIANCE
(UTCR 5-100)

13 I, Teresa Ozias, do hereby certify that I am the attorney for the within-named
14 Petitioner and that I mailed a copy of the attached Order Denying Summary Judgment to
15 Defendants by first class mail and prepaid the postage thereon on November 13, 2015,
16 that being not less than seven days prior to submission of the order to the court.

17 Dated at Dallas, Oregon, this 13 day of November, 2015.

18 
19 Teresa Ozias - OSB No. 901871
20 teresa@siso-law.com
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Verified Correct Copy of Original 12/2/2015.

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK
CIVIL DEPARTMENT

FILED
POLK COUNTY OREGON
15 DEC -1 PM 3:11
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ENTERED BY

DENTON A. HONBECK

Case No.: 15CV17952

JANE A. HONBECK

PLAINTIFFS,

VS.

OBJECTION TO PLAINTIFF'S REQUEST FOR
ENTRY UPON LAND, AND MOTION TO DISMISS,
AND MOTION TO AWARD LEGAL FEES/COSTS
TO THE DEFENDANTS

GREGORY L. WARNOCK

SHELLY K. WARNOCK

DEFENDANTS

Pursuant to paragraph 4.1 of the Land Sales Contract, that was signed on July 3, 2013, by all parties, and was previously submitted as a Plaintiff's exhibit in this case, the purchasers of the property (defendants in this case) to not give consent to the Plaintiffs to enter the property, as requested on December 05, 2015. Paragraph 4.1 requires the consent of the Purchasers for the Sellers, or the Seller's agents to enter the property. The Seller's who are the defendants in this case do not consent to the Plaintiff's request.

Plaintiff's reference Rules 36 and 43 of the ORCP in their request. However, ORCP 36 outlines the general provisions for Discovery in a civil case, for the purpose establishing evidence in a
OBJECTION TO PLAINTIFF'S REQUEST FOR ENTRY UPON LAND, AND MOTION TO DISMISS, AND
MOTION TO AWARD LEGAL FEES/COSTS TO THE DEFENDANTS - 1

1 Trial . ORCP 36 does not give authority for access to the property through a request, but assumes that a
2 trial may occur that may require discovery evidence. The defendants have not been made aware that a
3 Trial will be held in this case, and therefore for ORCP 36 to apply, the defendants would require that a
4 motion for a trial be made, before any evidentiary material be obtained through discovery.

5
6 The Defendants also object to the request because ORCP 36 assumes that evidence will
7 be discovered for a presumed trial, and yet no trial can be had in this case before the Land Sales Contract
8 has fully matured, on December 31, 2015, at which point the Defendants will either pay the total balance
9 owed to the Plaintiff's for the property sold under the Land Sales Contract, or return the property held by
10 the Land Sales Contract to the Plaintiffs, as is contractually required. The Defendants will honor the
11 December 31, 2015 deadline to fulfill the contractual obligation, so moving ahead with a trial, is not
12 possible between now and the time when the contract matures.

13
14 The Plaintiff's also referred to ORCP 43 in their request for entry, but the Rule doesn't
15 automatically supersede the signed Land Sales Contract (Par. 4.1) requirement that permission must be
16 given by the Sellers for entry. Also, the Defendants are not automatically required to consent to any form
17 of discovery, if they have an objection. ORCP 43 Par B(2) states that, "A request shall not require a
18 defendant to produce or allow inspection, copying, entry, or other related acts before the expiration of 45
19 days after service of summons, unless the court specifies a shorter time." The defendants additionally
20 request that the court consider the Defendant's objections to the Plaintiff's request, based on ORCP 43,
21 and our following objections:

22
23 1) the Defendants have not been given the proper amount of notice for inspection, based
24 on the rules for discovery in ORCP 43, and object to any inspection or appraisal of the property or
25 buildings listed in the Plaintiff's request, and
26

1 2) Defendants have not been notified that there will ever be a trial, for which discovery
2 may be required under ORCP 43, therefore there is no acceptable reason for any discovery process to
3 begin under ORCP Rules 36 or 43, and

4 3) Any material evidence gained through the discovery process must be clearly defined in
5 an order for discovery, which the request for entrance does not provide (ORCP 43 B(1), and

6 4) Any evidence gathered through discovery at this point in the case would become
7 frivolous, and also a waste of time for the Defendants and the Court, and will never be used in a trial,
8 because the Defendants must be given 60 days before a trial is scheduled, but less than 30 days will
9 remain for the Defendants to either pay the entire debt owed, or be required to vacate the property,
10 according to their obligation in the Land Sales Contract, which the Defendants have always agreed to.

11 Therefore, there is no reason for the Court to permit any requests or motions to access to the property for
12 discovery purposes, or for the Defendants to consent to such a request.
13
14

15
16 **DEFENDANT'S MOTIONS**

- 17 1. The Defendants strongly object to the Plaintiff's request, and move the court to deny
18 the Plaintiff's request for entry on December 5, 2015.
19
20 2. The Defendants also move the court to dismiss the underlying case to the Plaintiff's
21 request, based on the fact that there are no remedies by trial or otherwise available to
22 the Plaintiffs in this case, before the Land Sales Contract fully matures on December
23 31, 2015, at which time the entire case and any further Plaintiff motions will be moot.
24
25 3. The Defendants request that a hearing be set for oral arguments, regarding the
26 Plaintiff's request, if the Court denies the Defendant's motion to deny entrance to the
property, or the motion to dismiss this case, as requested.

OBJECTION TO PLAINTIFF'S REQUEST FOR ENTRY UPON LAND, AND MOTION TO DISMISS, AND
MOTION TO AWARD LEGAL FEES/COSTS TO THE DEFENDANTS - 3

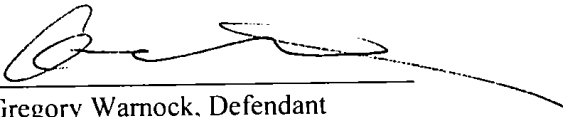
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4. The Defendants further move the court to award all reasonable fees and court costs to the Defendants in this case.

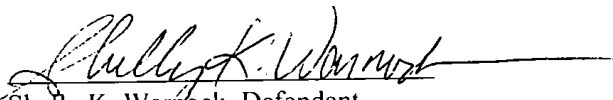
Certificate of Service

We certify that on this date, 30 November 2015, I served the foregoing objection upon the Plaintiff, and the motions to dismiss and award legal fees to the Defendants by US. Mail, at

Shetterly Irick Ozias
PO Box 105
Dallas, OR 97338



Gregory Warnock, Defendant



Shelly K. Warnock, Defendant

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

CERTIFICATE OF COMPLIANCE
(UTCR 5-010)

I, Teresa Ozias, do hereby certify that I am the attorney for the within-named Plaintiffs and that I did not confer with Defendants regarding this motion because they had already filed an objection on the matter from which I judged that conferring would be futile. I do not believe that Defendants will allow entry upon the property unless the court orders it.

Dated this 8 day of December, 2015.



Teresa Ozias - OSB No. 901871

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CERTIFICATE OF SERVICE


I hereby certify that I served a true and correct copy of the foregoing Certificate of Compliance (UTCR 5-010) on the date indicated below by:

- ☒ Mail with postage prepaid, deposited in the US mail at Dallas, Oregon
☐ office delivery
☐ hand delivery
☐ facsimile transmission
☐ email
☐ electronic filing notification.

I further certify that said copy delivered as indicated above was addressed to said attorney(s) or parties at the address(es) listed below:

Gregory and Shelly Warnock
PO Box 8043
Salem, OR 97303

on the 9 day of December, 2015.


Teresa Ozias- OSB #901871

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

PLAINTIFFS' MOTION TO COMPEL

Plaintiffs, by and through their attorney, Teresa Ozias, move for an order compelling entry upon land. A true copy of Plaintiffs' Request for Entry upon Land is attached hereto as Exhibit One and by reference incorporated herein. The estimated time for the hearing is 30 minutes. No official court reporting services are requested. This motion is based upon ORCP 36, 43 and 46 and the land sales contract attached as Exhibit 1 to the complaint.

POINTS AND AUTHORITIES

Defendants have sought to raise the value of the property as an issue relating to the appropriate remedy of foreclosure. Therefore, Plaintiffs are seeking to obtain an appraisal on the real property. Plaintiffs hired a licensed appraiser and sent Defendants the attached request (Ex 1) and the letter attached hereto as Exhibit 2. Defendants refused entry and filed an objection herein.

Paragraph 4.1 of the contract provides for access to the property upon written notice. Furthermore, ORCP 43A(2) provides for entry upon land for the purpose of inspection or any other purpose within the scope of ORCP 36. As Defendants have raised the issue of the

1 value of the property, Plaintiffs are certainly entitled to conduct an appraisal.

2 Defendants arguments in their objection are frivolous, without merit and primarily
3 made for the purpose of delay.

4 Plaintiffs request reimbursement of their attorney fees and costs related to this
5 motion because Defendants objection is not "substantially justified." The request is made
6 pursuant to ORCP 46A(4).

7 A certificate of compliance with UTCR 5.010 is submitted herewith.

8 DATED: 12-8, 2015

9 SHETTERLY, IRICK & OZIAS

10
11 By: 

12 Teresa Ozias - OSB #901871
13 Teresa@siso-law.com
14 Attorneys for Plaintiffs

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4 IN THE CIRCUIT COURT OF THE STATE OF OREGON
5 FOR THE COUNTY OF POLK

6 DENTON A. HONBECK, and
7 JANE A. HONBECK

8 Plaintiffs,

9 v.

10 GREGORY L. WARNOCK, and
11 SHELLY K. WARNOCK,

12 Defendants.

CASE NO. 15CV17952

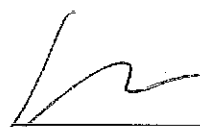
PLAINTIFFS' REQUEST
FOR ENTRY UPON LAND

13 Pursuant to Rule 36 and Rule 43 of the Oregon Rules of Civil Procedure, Plaintiffs
14 request entry for inspection and appraisal of the real property known as 634 Cessna Ave.,
15 Independence, Oregon on December 5, 2015 at 10 a.m. Plaintiffs will require entry into the
16 house, hangar and all outbuildings.

17 DATED: 11-20, 2015

18 SHETTERLY, IRICK & OZIAS

19
20
21 By:


Teresa Ozias - OSB #901871
teresa@siso-law.com
Attorneys for Plaintiffs

22
23
24 H:\T\realproperty\Honbeck\PlaintiffRequest.wpd

25 Exhibit 1

26 Page 1 of 2

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Plaintiffs' Request for Entry upon Land on the date indicated below by:

- ☒ Mail with postage prepaid, deposited in the US mail at Dallas, Oregon
☐ office delivery
☐ hand delivery
☐ facsimile transmission
☐ email
☐ electronic filing notification.

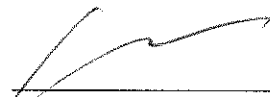
I further certify that said copy delivered as indicated above was addressed to said attorney(s) or parties at the address(es) listed below:

Gregory and Shelly Warnock
PO Box 8043
Salem, OR 97303

DATED: November 20, 2015

SHETTERLY, IRICK & OZIAS

By:


Teresa Ozias - OSB #901871
Teresa@siso-law.com
Attorneys for Plaintiffs

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Exhibit 1

Page 2 of 2

**SHETTERLY
IRICK
OZIAS**

LANE P. SHETTERLY
MARK IRICK (1952-2007)
TERESA OZIAS

ATTORNEYS AT LAW

189 SW ACADEMY STREET • PO BOX 105 • DALLAS, OREGON 97338
TELEPHONE 503-623-6695 • FAX: 503-623-6698

November 20, 2015

*Certified Mail No. 7003 2260 0002 0659 6864
Return Receipt Requested and First Class Mail*

Mr. and Mrs. Gregory and Shelly Warnock
PO Box 8043
Salem, OR 97303

Re: Notice of Inspection
634 Cessna Ave., Independence, OR 97351

Dear Mr. and Mrs. Warnock:

As you know, this firm represents Denton and Jane Honbeck. You are hereby notified of an inspection of the property and appraisal by an appraiser to occur on December 5, 2015 at 10 a.m. Plaintiffs and the appraiser will need access to the house, hangar and all outbuildings. This notice is provided pursuant to paragraph 4.1 of the contract.

Enclosed also is Plaintiffs' Request for Entry upon Land. Failure to comply may result in sanctions from the court. If you have any questions about this, you should contact your own attorney.

Yours very truly,



TERESA OZIAS
teresa@siso-law.com

cc: Gregory and Shelly Warnock, 634 Cessna Ave., Independence, OR 97351
Denton and Jane Honbeck *via email*

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Exhibit 2
Page 1 of 2

SENDER: COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
<p>1. Article Addressed to:</p> <p>Gregory & Shelly Warnock PO Box 8043 Salem, OR 97303</p>		<p>A. Signature <input checked="" type="checkbox"/> <u>Shelly Warnock</u> <input type="checkbox"/> Agent</p> <p>B. Received by (Printed Name) <u>Shelly Warnock</u> <input type="checkbox"/> Addressee</p> <p>C. Date of Delivery</p>	
<p>2. Article Number (Transfer from service label)</p> <p>7003 2260 0002 0659 6864</p>		<p>D. Is delivery address different from item 1? If YES, enter delivery address below: <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p>		<p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	

CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Plaintiffs' Motion to Compel on the date indicated below by:

- ☒ Mail with postage prepaid, deposited in the US mail at Dallas, Oregon
- ☐ office delivery
- ☐ hand delivery
- ☐ facsimile transmission
- ☐ email
- ☐ electronic filing notification.

I further certify that said copy delivered as indicated above was addressed to said attorney(s) or parties at the address(es) listed below:

Gregory and Shelly Warnock
PO Box 8043
Salem, OR 97303

on the 9th day of December, 2015.


Teresa Ozias - OSB #901871

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

PLAINTIFFS' RESPONSE TO
DEFENDANTS' MOTION TO DISMISS
and REQUEST FOR TRIAL DATE

Plaintiffs objects to Defendants' motion to dismiss. There is no basis for Defendants' argument that Plaintiffs must wait until the balloon date before filing foreclosure. Defendants have not made any payments since January of 2015, a fact which Defendants have not denied. They are in default of the contract.

Defendants' motion is frivolous and made for the purpose of delay so they can continue to live on the premises for free. Plaintiffs request a trial date be set as soon as possible.

DATED: 12-8, 2015

SHETTERLY, IRICK & OZIAS

By: 

Teresa Ozias - OSB #901871
teresa@siso-law.com
Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE


I hereby certify that I served a true and correct copy of the foregoing Plaintiffs' Response to Defendants' Motion to Dismiss and Request for Trial Date on the date indicated below by:

- ☒ Mail with postage prepaid, deposited in the US mail at Dallas, Oregon
☐ office delivery
☐ hand delivery
☐ facsimile transmission
☐ email
☐ electronic filing notification.

I further certify that said copy delivered as indicated above was addressed to said attorney(s) or parties at the address(es) listed below:

Gregory and Shelly Warnock
PO Box 8043
Salem, OR 97303

on the 9th day of December, 2015.


Teresa Ozias - OSB #901871

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

ORDER COMPELLING ENTRY
UPON LAND

This matter comes before the court upon Plaintiffs' Motion to Compel. A hearing was held on December 18, 2015, the Honorable Monte S. Campbell presiding. Present at the hearing were Plaintiffs and their attorney, Teresa Ozias. Defendants did not appear. They were sent notice of the hearing and called earlier in the day to reschedule the hearing, which was denied.

Plaintiffs seek access to the real property that is at issue herein, known as 634 Cessna St. Independence, OR 97351, including the land, house, hangar and all outbuildings (hereafter, "the Premises").

The court finds that Plaintiffs are entitled to an inspection and appraisal of the Premises.

It is, therefore, ORDERED, as follows:

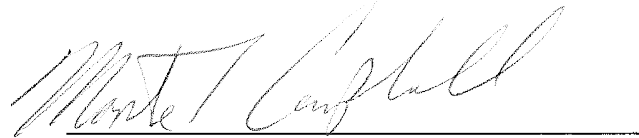
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1 Defendants shall provide Plaintiffs and their appraiser access to the Premises on
2 January 4, 2016 at 10 a.m. (or another reasonable time and date), and for so long as
3 necessary to complete the inspection and appraisal.

4 DATED:

Signed: 12/24/2015 08:58 AM

5
6 

7
8 Circuit Court Judge Monte S. Campbell

9 SUBMITTED BY:
10 TERESA OZIAS - OSB No. 901871
11 teresa@siso-law.com
12 SHETTERLY, IRICK & OZIAS
13 Attorneys for Plaintiff
14 P.O. Box 105
15 Dallas, Ore gon 97338
16 Telephone: 503-623-6695
17 Fax: 503-623-6695

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☐ office delivery

☐ hand delivery

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☐ email

☐ electronic filing notification.

Gregory and Shelly Warnock
PO Box 8043
Salem, OR 97303

on the 23rd day of December, 2015.

Teresa Ozias - OSB #901871

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

AFFIDAVIT OF PLAINTIFF
DENTON HONBECK

STATE OF OREGON,

County of Polk.

ss.

I, Denton Honbeck, being first duly sworn, depose and say:

1. My wife and I are the plaintiffs herein.
2. The court signed an Order Compelling Entry Upon Land on December 24, 2015. The order ordered Defendants to allow access to the property known as 634 Cessna St., Independence, Oregon, ("the Premises") on January 4, 2016 at 10 a.m., for purposes of an inspection and appraisal.
3. My wife and I and the appraiser, Jeff Sanders, went to the Premises on said time and date. We knocked on the door, and no one answered. I pounded on the door for several minutes while their dog barked loudly at the door. We looked in the windows, and it appeared that no one was home. My wife opened the unlocked door and Mr. Warnock (Defendant) appeared suddenly and shoved her out the door. He shouted: "No, no way, get out!" He slammed the door and locked it.
4. We were upset at the condition of the house, which we observed from the windows.

Shetterly, Irick, Shetterly & Ozias
Attorneys at Law
P.O. Box 105, Dallas, OR 97338
(503) 623-6695

1 The kitchen has been torn up and not finished, and he cut up some of the new
2 cabinets we installed. The exterior of the house and the yard have not been
3 maintained and the Arborvitae are dead or dying.

4 5. The appraiser was able to take measurements from the outside and gave us an
5 estimate of value of between \$245,000 and \$270,000 based on market comparisons.
6 Based on my observations of the damage that was done to the house, I would
7 estimate \$200,000 in its current condition. I am familiar with property values in the
8 Independence Airpark, where the Premises is located, because I have monitored
9 sales prices due to my own attempts to sell the Premises.


10 6. We sold the Premises to Defendants for \$290,000. Defendants owed principal of
11 \$255,994.31 as of July 8, 2015. They now owe significantly more because of interest,
12 attorney fees and costs related to this foreclosure, taxes, insurance, homeowner fees,
13 and late fees, none of which they have paid.

14 7. Defendants have lived on the property without making any payments since January
15 of 2015. Furthermore, they have not paid the insurance, taxes or homeowner fees,
16 all of which we have had to pay.

17 8. Defendants appear to have moved out of the Premises as substantially all of their
18 furniture is gone. They left the doors unlocked.

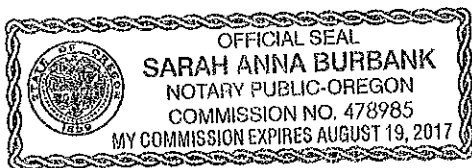
19 9. I paid the appraiser \$500.

20 I make this affidavit for purposes of Plaintiffs' Motion for Sanctions: ORCP 46.

21
22 
23 Denton Honbeck

24 *notary on following page*
25
26

1 SUBSCRIBED AND SWORN to before me this 6th day of January, 2016.



Sarah Anna Burbank
NOTARY PUBLIC FOR OREGON

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CERTIFICATE OF SERVICE

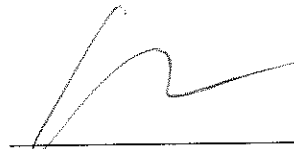
I hereby certify that I served a true and correct copy of the foregoing Affidavit of Plaintiff Denton Honbeck on the date indicated below by:

- ☒ Mail with postage prepaid, deposited in the US mail at Dallas, Oregon
☐ office delivery
☐ hand delivery
☐ facsimile transmission
☐ email
☐ electronic filing notification.

I further certify that said copy delivered as indicated above was addressed to said attorney(s) or parties at the address(es) listed below:

Gregory and Shelly Warnock
PO Box 8043
Salem, OR 97303

on the 6th day of January, 2016.


Teresa Ozias - OSB #901871

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Shetterly, Irick & Ozias
Attorneys at Law

P.O. Box 105, Dallas, OR 97338
Phone: (503) 623-6695 - Fax: (503) 623-6698

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

PLAINTIFFS' MOTION FOR
SANCTIONS: ORCP 46

Plaintiffs move this court for sanctions against Defendants for their failure to comply with the court's Order Compelling Entry Upon Land, signed December 24, 2015. This motion is based upon ORCP 46, and the affidavit of Plaintiff Denton Honbeck, submitted herewith.

POINTS AND AUTHORITIES

Defendants failed to allow an inspection and appraisal of the property at issue herein as ordered by the court in its Order Compelling Entry Upon Land dated December 24, 2015. The inspection and appraisal were necessitated by Defendants' own argument in opposition to Plaintiffs' Motion for Summary Judgment. Defendants claimed an equitable defense to strict foreclosure because of their equity in the property. Defendants' refusal to allow access has prevented Plaintiffs from responding to that argument and has caused more undue delay.

Defendants have lived on the property without making any payments since January of 2015. Defendants have not denied their failure to make the monthly payments. In addition, Defendants have not paid the insurance, taxes or homeowner fees, all of which

1 Plaintiffs have had to pay. Defendants' recalcitrance and delay has cost Plaintiffs
2 impairment of their collateral, a loss of income and an increase in their expenses as they
3 shoulder all of the costs of the property, while Defendants live there for free.

4 ORCP 46B.(2) lists the permissible sanctions, which include:

5 **"B.(2)(a) Establishment of facts.** An order that the matters that caused the motion
6 for the sanction or any other designated facts shall be taken to be established for the
7 purposes of the action in accordance with the claim of the party obtaining the
8 order."

9 **"B.(2)(b) Designated matters.** An order refusing to allow the disobedient party to
10 support or oppose designated claims or defenses, or prohibiting the disobedient
11 party from introducing designated matters in evidence."

12 **"B.(2)(c) Strike, stay, or dismissal.** An order striking out pleadings or parts
13 thereof, or staying further proceedings until the order is obeyed, or dismissing the
14 action or any part thereof, or rendering a judgment by default against the
15 disobedient party."

16 In addition, 46B.(3) provides:

17 **"B.(3) Payment of Expenses.** In lieu of or in addition to any order listed in
18 subsection B(2) of this rule, the court shall require the party failing to obey the order
19 or the attorney advising that party, or both, to pay the reasonable expenses,
20 including attorney fees, caused by the failure, unless the court finds that the failure
21 was substantially justified or that other circumstances make an award of expenses
22 unjust."

23 CONCLUSION

24 Plaintiffs request the following relief:

- 25 1. Establishing the fact that Defendants do not have equity in the property to
26 the extent that strict foreclosure would be inequitable in the circumstances.

1 46B.(2)(a).

2 2. Ordering that Defendants are prohibited from asserting a defense based on
3 their supposed equity in the property. 46B.(2)(b).

4 3. Ordering that Defendants' pleading is stricken and rendering a judgment by
5 default. 46B.(2)(c).

6 4. Based on the above, granting Plaintiffs' Motion for Summary Judgment.
7 Alternatively, setting an immediate trial date at which all issues, including
8 this motion, may be resolved.


9 5. Awarding Plaintiffs' their costs and attorney fees and appraiser fee (\$500)
10 incurred herein. Plaintiffs request that the amount be determined at the
11 conclusion of the proceedings when Plaintiffs submit their request for
12 attorney fees pursuant to ORCP 68.

13 6. For such further or other relief as the court deems just and equitable.

14
15 DATED: January 6, 2015

16
17 SHETTERLY, IRICK & OZIAS

18
19 By:

20 
Teresa Ozias - OSB #901871
Teresa@siso-law.com
Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

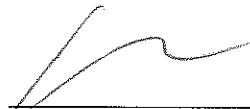
I hereby certify that I served a true and correct copy of the foregoing Plaintiffs' Motion for Sanctions: ORCP 46 on the date indicated below by:

- ☒ Mail with postage prepaid, deposited in the US mail at Dallas, Oregon
☐ office delivery
☐ hand delivery
☐ facsimile transmission
☐ email
☐ electronic filing notification.

I further certify that said copy delivered as indicated above was addressed to said attorney(s) or parties at the address(es) listed below:

Gregory and Shelly Warnock
PO Box 8043
Salem, OR 97303

on the 6th day of January, 2016.



Teresa Ozias - OSB #901871

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Shetterly, Irick & Ozias

Attorneys at Law

P.O. Box 105, Dallas, OR 97338

Phone: (503) 623-6695 - Fax: (503) 623-6698

IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

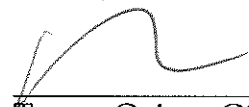
PLAINTIFFS' NOTICE OF DISMISSAL

Plaintiffs, by and through their attorney Teresa Ozias, give notice of dismissal,
without prejudice, pursuant to ORCP 54A. Defendants have not filed a counterclaim.

DATED: January 28, 2016.

SHETTERLY, IRICK & OZIAS

By:


Teresa Ozias - OSB #901871
teresa@siso-law.com
Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I hereby certify that I served a true and correct copy of the foregoing Plaintiffs' Notice of Dismissal on the date indicated below by:

- ☒ Mail with postage prepaid, deposited in the US mail at Dallas, Oregon
☐ office delivery
☐ hand delivery
☐ facsimile transmission
☐ email
☐ electronic filing notification.

I further certify that said copy delivered as indicated above was addressed to said attorney(s) or parties at the address(es) listed below:

Gregory and Shelly Warnock
PO Box 8043
Salem, OR 97303

on the 28th day of January, 2016.



Teresa Ozias - OSB #901871

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IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF POLK

DENTON A. HONBECK, and
JANE A. HONBECK

Plaintiffs,

v.

GREGORY L. WARNOCK, and
SHELLY K. WARNOCK,

Defendants.

CASE NO. 15CV17952

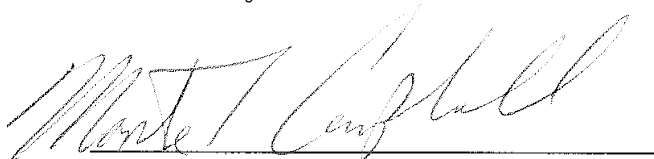
GENERAL JUDGMENT OF DISMISSAL

This matter comes before the court upon Plaintiffs' Notice of Dismissal pursuant to ORCP 54A. And it appearing to the court that Defendants have not filed a counterclaim.

It is, therefore, ORDERED: that the case is dismissed without costs.

DATED:

Signed: 2/3/2016 10:56 AM



Circuit Court Judge Monte S. Campbell

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CERTIFICATE OF COMPLIANCE (UTCR 5-100)

I, Teresa Ozias, do hereby certify that I am the attorney for the within-named Plaintiffs and that I mailed a copy of the attached General Judgment of Dismissal to Defendants by first class mail and prepaid the postage thereon on January 28, 2016.

This proposed order or judgment is ready for judicial signature because:

1. ☐ Each opposing party affected by this order or judgment has stipulated to the order of judgment, as shown by each opposing party's signature on the document being submitted.

2. ☐ Each opposing party affected by this order or judgment has approved the order or judgment, as shown by signature on the document being submitted or by written confirmation of approval sent to me.

3. ☐ I have served a copy of this order or judgment on all parties entitled to service and:

a ☐ No objection has been served on me.

b ☐ I received objections that I could not resolve with the opposing party despite reasonable efforts to do so. I have filed a copy of the objections I received and indicated which objections remain unresolved.

c ☐ After conferring about objections, [role and name of opposing party] agreed to independently file any remaining objection.

4. ☐ The relief sought is against an opposing party who has been found in default.

5. ☐ An order of default is being requested with this proposed judgment.

6. ☒ Service in advance is not required pursuant to subsection (3) of this rule, or by statute, rule, or otherwise: Defendants have signed deed in lieu of foreclosure.

7. ☐ This is a proposed judgment that includes an award of punitive damages and notice has been served on the Director of the Crime Victims' Assistance Section as required by subsection (4) of this rule.

1 Dated this 28th day of January, 2016.

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4 Teresa Ozias - OSB No. 901871
5 Attorney for Plaintiffs
6 teresa@siso-law.com

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